The Senate met at 9:30 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Sovereign God of our Nation, we ask You for the supernatural gift of wisdom. The Bible tells us wisdom is more precious than rubies, more important than riches and honors. Solomon called wisdom a “tree of life to those who lay hold of her.” Your gift of wisdom enables true success, righteousness, justice, and equity. The Talmud reminds us that the aim of wisdom is repentance and good deeds. With wisdom, we turn our lives back to You in authentic repentance and commit ourselves to do and say what You guide.

Thank You for the clear invitation to receive wisdom given us by James, Jesus’ brother: “If any of you lacks wisdom, let him ask of God who gives to all liberally and without reproach, and it will be given him.”—James 1:5.

Having asked for wisdom, we praise You in advance for the x-ray vision to see beneath the surface of issues and discern what is Your will for us and our beloved Nation. Bless the women and men of this Senate with a special measure of wisdom today. Through our Lord and Saviour. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able majority leader, Senator LOTT of Mississippi, is recognized.

Mr. LOTT. Thank you, Mr. President.

SCHEDULE

Mr. LOTT. Mr. President, this morning we are scheduled to have 30 minutes of debate prior to a vote on the motion to invoke cloture on the substitute amendment to S. 830, the FDA reform bill. This is the second cloture vote we have had to have on this very important bipartisan legislation to reform the Food and Drug Administration so that medicines and medical devices can get to the American people in a responsible and reasonable period of time so that they don’t have worse health conditions or even death in many instances. We are scheduled to have a rolloff vote at 10 a.m. this morning on cloture, if it is required. And we had hoped to go ahead and do that and then go back to the Interior appropriations bill and complete that, and then come back to FDA.

We have a Senator that has an illness this morning who would like very much to be able to make this vote. So we are contacting all of the managers of the legislation that is pending this morning, including the Interior appropriations committee, to see if we can maybe take some additional time this morning on Interior appropriations. If we can get that worked out, we may delay that 10 o’clock vote until either say 11:15 or 12:15 in an effort that I know all Members would want to make to accommodate this Senator who is anxious not to miss the vote.

So we will ask our colleagues on both sides to cooperate as we try to use this time for constructive debate and see then exactly what time we could expect these votes to occur.

Under the consent agreement that we entered into last week, Members have until 10 a.m. today to file second-degree amendments to the FDA reform bill. After the disposition of that cloture vote and/or the FDA reform bill, depending on what we can work out, then we will resume consideration of H.R. 2107, the Interior appropriations bill. Senators can expect additional votes throughout the day either on the FDA reform package or on the Interior appropriations bills.

I will ask the managers of the FDA bill to work with us on this and cooperate with us so that we can have some orderly consideration of both the FDA and the Interior appropriations bill. Hopefully we will go to Interior after we invoke cloture again on FDA reform, then allow Senators that are interested to continue to work together, and then see if we can get an agreement to complete action on FDA reform in a reasonable time this week.

Does the Senator from Vermont want me to yield at this point?

Mr. JEFFORDS. Yes. If the Senator will yield, my understanding was when we went home this weekend that we would be ready to close the bill and have all amendments with time agreements. Now my understanding from the minority is that they are not in agreement on one particular provision of the substitute. Thus, I would believe we should go forward with the cloture vote. We are ready, though, with a number of amendments for which I believe we have agreements. We could address those in the interim while we try to work out the final amendment.

Mr. LOTT. I was under the impression last week that there was one remaining issue where there was disagreement, and there was a lot of discussion about that—the so-called cosmetics portion of the bill. I was not involved in the substance of that discussion. But I understand Senators did work out an agreement and that matter has been resolved. But I understand as well that there is another issue.

I just wonder how long this is going to go on.

Mr. JEFFORDS. I do, too. I understood that all matters were taken care of. But now I understand from the leader of the minority that is not the case—that they still have this problem with respect to one provision. But we are ready to go ahead with all of the other amendments and believe we should expeditiously go to the cloture vote whenever the situation presents itself, as the leader outlined.

Mr. LOTT. I thank the Senator from Vermont. I know he is committed to getting this legislation completed. There are very few bills that I have seen that have such broad bipartisan
support as this one does. It is costing millions of dollars to comply with the ridiculous delays from FDA, and the American people are being deprived of medicines and devices that should be approved much quicker. Some of them are just impossible to explain.

I hope that we can complete action this week.

I appreciate the efforts and the leadership of the Senator from Vermont.

Mr. HARKIN. If the leader will yield, I have a question.

So we are not having a cloture vote at 10 a.m. Was there a unanimous-consent agreement entered into that I missed before I came onto the floor?

Mr. LOTT. No. There was no unanimous-consent agreement.

Mr. HARKIN. Are we not voting at 10 o'clock?

Mr. LOTT. We have a Senator that is unavoidably detained that really is anxious to be present on that vote. We are trying to accommodate his schedule, as I know the Senator from Iowa would want us to do. We are working with the managers of both this bill and Interior appropriations and the interested Senators to see when we might have that vote. We would at some point try to enter into an agreement as to when it would be.

Mr. HARKIN. Are we going on the FDA bill?

Mr. LOTT. We will talk about it for a little while. But at 10 o’clock we will advise Members whether we are going to have a vote, or when we are deferring it to.

Mr. President, I yield the floor.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. HUTCHINSON). Under the previous order, leader time is reserved.

FOOD AND DRUG ADMINISTRATION MODERNIZATION AND ACCOUNTABILITY ACT OF 1997

The PRESIDING OFFICER. The Senate will now resume consideration of S. 830, with the time until 10 a.m. to be equally divided.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 830) to amend the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act to improve the regulation of food, drugs, devices, and biological products, and for other purposes.

The Senate resumed consideration of the bill.

Mr. JEFFORDS addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

MODIFIED COMMITTEE SUBSTITUTE AMENDMENT NO. 1100

Mr. JEFFORDS. Mr. President, I yield myself such time as I may consume.

Mr. President, we are here to discuss yet again the need for cloture on S. 830, the FDA Modernization and Accounting Act. We have already had 14 hours of floor debate on this measure and we have not yet discussed this amendment. This will be the second time that cloture has been voted on regarding this measure. The first vote was 89 to 5 to invoke cloture. The Senate has spoken. And, yet, we are here to repeat ourselves again.

My colleagues have already heard repeatedly from both sides of the aisle about the strong bipartisan commitment to crafting this measure, about the months of negotiations, deliberations on the Administration, the minority, and outside groups. Literally dozens of accommodations have been made and agreements reached. No one disputes that this is a good bill. No one should dispute that we have moved forward, or that we should move forward, with our debate on the remaining issues. Now we should move forward on that debate.

This measure accomplishes two very important objectives. First, it modernizes the way that the Food and Drug Administration accomplishes its mission. It streamlines the review and approval process for medical devices, pharmaceutical, and biological products. It helps ensure that the best and safest medical technology available in the world would be available to the American people. In so doing, it helps ensure that the best medical technology jobs will continue to be available for the American people.

Second, this measure authorizes the Prescription Drug User Fee Act—or PDUSA, as it is known. Everyone agrees that PDUSA has been immensely successful in helping FDA do its job better and more efficiently.

Mr. President, congressional authorization for PDUSA expires in 15 days. At the end of September this successful and innovative program will be at serious risk. It is the height of irony that a program like PDUSA that was designed to reduce delay at the FDA is now at risk of becoming bogged-down in a procedural delay on the Senate floor.

I would argue that the time for delay is over, and that the time for the Senate to do its work it was sent here to do is now.

Almost 50 amendments have been filed on this measure. And, frankly, virtually all of them are non-germane, or they have been worked out, or they can be worked out. A single provision remains that may require some extended debate, and we should move to its consideration and an up-or-down vote on it as soon as possible.

Last week we spent almost 15 hours talking about uniformity for cosmetics. We have an agreement on that provision, thanks to the efforts of Senator GREGG.

I say that we should move on. I say we complete this debate, and finish this measure, and let’s vote.

Mr. President, I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, with all due respect to my friend and colleague, the majority leader, the fact of the matter is that the votes that we had last week required that we give some opportunity to examine a very important provision—and that is the preemption of various States’ ability to protect their public—we have seen a rather dramatic change in the language of the provision that will continue to permit the States to protect the public. That was very important for the protection of the American public. I know that there are some people around here who want to see the trains run on time. But some of us—not only those of us here but the National Governors’ Conference, the public health organizations, the women’s network organizations that deal with women’s health issues—a wide range of consumers believe, quite deeply, that we are abdicating within our rights to make sure that this provision was offered and changed, and we did so. And, by doing so, the public health interest is preserved.

Now here we are on the floor of the United States the morning after having seen the headlines from two national journals—yesterday in the Wall Street Journal, talking about a particular prescription drug called fen/phen, that had been moved through, rushed through the FDA. It has been linked to everything from brain damage in animals to primary pulmonary hypertension; a rare but fatal lung disease; millions of Americans tried the drugs to slim down; some 60 million people worldwide were estimated to have taken the drug; the straw that broke the camel’s back was a heart valve problem which now has been widely recognized.

Here is an item in the Washington Post. Two diet drugs are pulled off the market. Why? Because the products were used for purposes for which the drug was not approved.

We are talking about an identical provision in this body with regard to medical devices—the use of the medical device for purposes for which it has not been approved.

We have seen the whole world being awakened to this particular health problem. Some of us are trying to make sure that we don’t have headlines like this in 3 months, 4 months, or 6 months with regard to the medical device issue. That is what we are talking about.

Mr. President, I would just point out that there are about two little words that, if the majority would be willing to accept, would move us right ahead, and get us very short time agreements on the other elements.

Let me just point out. Mr. President, there are two provisions with regard to medical devices—one they call class II—devices which represent about 5 percent of the devices. Those are the new devices.
In the language of this bill, it says, whether or not there is reasonable assurance of safety effectiveness, if the proposed labeling is neither false nor misleading.

"Neither false nor misleading," that is in reference to class III devices. But, if you look at class I and II devices with regard to the representations that are made involving the FDA, there is no such language.

If the majority will take the language that we propose for class III and apply that to class I and II, we will call this cloture vote off. What person in the United States of America wants to permit medical devices to be approved if we cannot have agreement by the manufacturers that their statements to the FDA reflect the true uses for the devices?

My goodness, are we in that big of a hurry? That is why this issue is important. Now, the majority leader says we have just one more item. We are going to deal with this issue, and we have offered compromise language to deal with it. It is of vital importance and we will have a chance later to discuss the health hazards associated with it. The medical device industry, which has been very cooperative in working out other provisions on this, had refused to go along with our proposed language. Medical device labeling has important health implications.

In regard to the cloture vote, I respect to my friend and colleague, we have talked about this. Senator DURBin has talked about sections 404 and 406. This particular issue is the key issue.

If we can get the language in the bill ensuring that we will not permit the medical device industry to restrict the FDA's ability to make a full study of medical device safety, I think we would move ahead with the legislation. I yield the remainder of my time.

The PRESIDING OFFICER. Who yields?

Mr. JEFFORDS. Mr. President, I must answer that charge.

Mr. JEFFORDS. To inflame this issue into being one of false information and filing of misleading information is totally incorrect. The issue here is not that. The issue here, on each of these medical devices, is whether or not they must file every conceivable, possible use that FDA thinks might be made of it. FDA should focus rather on the use that it is intended for or any other use that the manufacturers know it will be intended for. There is nothing involving false or misleading information. That, of course, is under the control of the FDA and that would be a serious matter with the FDA. It could, and should deny approval of a device where a manufacturer deliberately files false and misleading information. Let us set the record straight. Manufacturers cannot file false and misleading language. To raise that as the issue is to really differ from what the important issue is, and that is how long do Americans have to wait to get access to important, new medical devices. In Europe it takes much less time and it is much more expeditiously handled. We can have the same kind of treatment here while ensuring that they are safe and effective for their intended use. For any device that is intended for a particular use and it is known by doctors to be effective for another use, that's fine. That is the practice of medicine. Doctors sometimes use devices for a different purpose.

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But for the manufacturer to search every conceivable use and then to study every conceivable possible use and then to study every conceivable possible use ends up in delays of these devices coming onto the market. That means that Americans, doctors and patients, are unable to utilize medical innovations that are more readily available in Europe. So I wish we would get away from making this into a "false and misleading language" filing. There is no question here as to the decision is how much right does the FDA have to require a manufacturer to understand and get involved with the practice of medicine where some other use might be made. That is the issue.

I think there are ways we can solve this, but not just by raising it to the issue of emotionalism. That is not to the solution here. There is no problem having false or misleading information filed on a medical device application, because that is against the law. I yield the floor.

Mr. KENNEDY. Mr. President, how much time do we have?

The PRESIDING OFFICER. The Senator from Massachusetts has 2 minutes and 32 seconds remaining.

Mr. KENNEDY. I yield the remaining time to the Senator from Iowa. I think we will have more to say.

Mr. HARKIN. I thank the Senator for yielding. Let me agree with Senator KENNEDY on this issue. The stories in the paper this morning ought to alarm us all about the need to proceed very cautiously and very carefully about what we are doing. I spent a lot of time looking at devices. I had amendments on the bill itself, when it was in committee, on devices. The FDA has the authority now, if a device is used for a certain purpose, to make sure that there are not misleading or false advertising proposals. But when they want to use the device for a purpose for which it is not intended, there is nothing in the bill to prohibit that. That is what we are talking about, and I think we have to proceed very cautiously and carefully here.

Mr. President. I did want to talk about another issue. I thank Senator JEFFORDS and Senator KENNEDY for their hard work and leadership on this bill. I think we all agree we need some reform of FDA. I have been in favor of that. We need to streamline the procedures and agree with both of them in that regard. There are many positive provisions in this bill.

AMENDMENT NO. 1137 TO MODIFIED COMMITTEE SUBSTITUTE AMENDMENT NO. 1138

(Purpose: To establish within the National Institutes of Health an agency to be known as the National Center for Complementary and Alternative Medicine)

Mr. HARKIN. Mr. President. I am delighted, however, later on, that an essential element was not included. A major goal of FDA reform was to include access to medical innovations without compromising public safety. I have an amendment—amendment No. 1137—Mr. President, that speaks to that. I would like to call up that amendment at this time and ask for its immediate consideration.

The PRESIDING OFFICER. The clock will report.

The legislative clerk read as follows:

The Senator from Iowa (Mr. HARKIN), for himself, Mr. HATCH, Mr. DASCHLE, and Ms.
Mr. HARKIN. Mr. President, I ask unanimous consent that the amendment be in order.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today’s Record under “Amendments Submitted.”)

Mr. HARKIN. Mr. President, further, I ask unanimous consent that this amendment be in order, notwithstanding any vote on cloture.

The PRESIDING OFFICER. Is there objection to the request?

Mr. JEFFORDS. I reserve the right to object. What is the regular order here with respect to amendments?

The PRESIDING OFFICER. Amendments are in order to both the substitute and the bill.

Mr. JEFFORDS. At this time, prior to cloture?

The PRESIDING OFFICER. Amendments may be called up prior to the cloture vote.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. Is there objection to the request?

Mr. JEFFORDS. I object at this time.

The PRESIDING OFFICER. Objection is heard. The Senator from Iowa has the floor.

Mr. HARKIN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Vermont has 15 seconds.

Mr. HARKIN. Mr. President, this amendment is cosponsored by a number of Senators on both sides of the aisle. Senators Hatch, Daschle, Mikulski, myself, and a number of Senators on both sides of the aisle. I don’t believe it is going to be objected to.

However, we are facing the problem of cloture. That’s why I asked for unanimous consent. I am sorry the manager of the bill would not allow this amendment to be in order.

The PRESIDING OFFICER. The Senator from Vermont controls the remaining time.

Mr. JEFFORDS. How much time do I have remaining?

The PRESIDING OFFICER. The Senator from Vermont has 5 minutes 26 seconds remaining.

Mr. JEFFORDS. I yield the remaining time to Senator Coats.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, I don’t need all the 5 minutes. I would be happy to yield back to the Senator from Vermont to wrap up before the cloture vote. It is unfortunate that we are in this position again. We had a substantially bipartisan, overwhelming vote to invoke cloture on the motion to proceed. I believe the vote was 89 to 5. I think that indicates a very broad level of support for the need to move forward with this legislation that was 2% years in the making. There is obviously a widespread, general consensus that FDA reform is necessary to provide better protection for the health and safety of Americans and to provide access to drugs and devices that Americans have been denied due to delays at FDA. We are trying to expedite that process. We are trying to bring in expert advice from outside the agency to help FDA, whether it is through the tax that is levied on prescription drug companies that goes to hire additional workers and provide additional resources for FDA, or whether it is for outside agencies, clinical trials to help them in the process of reviewing this tremendous backlog of applications for health-improving, and in many cases lifesaving, devices and drugs.

What we are trying to do here is give FDA the kind of support and resources it needs, along with a pretty good shove in the right direction, to bring our agency up to world class standards and to the level of effectively deal with this exciting explosion of technology so that the American people can reap great benefits.

I regret once again we have to go to a cloture vote. We just ran into a problem here, procedurally, with the amendment, the Senator from Iowa fearing that it would cut off his ability to offer a relevant amendment under cloture. I would say to the Senator from Iowa, none of us really wants to go to cloture. But in order to move this bill forward, it appears that we have to invoke cloture again.

I know under the rules of cloture, it limits the amendments as to relevancy. No one in favor of FDA reform wants to keep going through this process of invoking cloture, but unfortunately we have to do it in order to move the bill forward.

Again, 2½ years in the making, there were extensive hearings in the Labor Committee, efforts on a bipartisan basis to resolve problems and disputes, votes on dozens of post-committee action, 30-second concessions or modifications in response to concerns that were raised postcommittee on this. So, none of us here supporting and promoting the movement forward of this legislation is trying to delay anything. We are just trying to expedite it. Nor are we trying to say, “Our way or no way.” There has been extensive negotiation, extensive accommodation, extensive work to move this bill forward in any way that we possibly can.

So I urge my colleagues, as we did a week or so ago, I urge my colleagues to vote with us on cloture. We have no other choice, other than lengthy debate over items and issues that have been discussed over and over and over and voted on and negotiated. Clearly, we know where the Members of the U.S. Senate stand, both Republicans and Democrats, liberals and conservatives. There is about as widespread support for this bill as any major legislation that has come before the Senate as long as I have been in here, for 9 years. It is time to move forward. Regrettably, we have to do it once again with a cloture motion.

I urge my colleagues to help us move this very needed and very important legislation the next step forward.

The yield back any remaining time I have to the Senator from Vermont.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, as to the Senator from Iowa, I apologize that we are in an awkward situation this morning. I have assured him that we will have a hearing in October on NIH with respect to alternative forms of medicine. I look forward to that because I agree with him on that issue.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the previously scheduled cloture vote be postponed to occur at 12:15 p.m. today, and further, that second-degree amendments may resume at 12:15 p.m. today, and further, I ask unanimous consent that following debate this morning regarding the FDA reform bill, the Senate resume consideration of the Interior appropriations bill until the cloture vote.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Mr. President, I ask consent to the Senate to resume ** * *.” We would like to have at least a limited period of time. I know the Senator from Iowa wanted to speak. I was wondering if we can at least get a half hour debate on the FDA reform bill before finishing this morning. I further ask consent that following debate this morning regarding the FDA reform bill, the Senate resume consideration of the Interior appropriations bill until the cloture vote.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Mr. President, reserving the right to object, I do not object to moving the vote to 12:15 today. I understand the leader wants to get to the Interior appropriations bill. I do not want unduly delay that provision. However, it says under the proposal, “I ask consent that following the debate this morning regarding the FDA reform bill, that the Senate resume consideration of the Interior appropriations bill until the cloture vote.”

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Mr. President, under the circumstances, I reserve the right to object since an additional proposal has been made here. Can I inquire of the Senator from Massachusetts exactly what he is proposing to add here?

Mr. KENNEDY. The Senator from Iowa wanted to be heard on a matter. I went to speak just briefly to clarify the record. I was wondering if we can divide that time between now and 10:30—we took up some of the time between 9:30 and 10 for debate and discussion—and then go to Interior.

Mr. LOTT. Mr. President, further reserving the right to object, we are moving at this time to accommodate one of our Senators who has a health problem right now. It does disrupt the whole schedule. We have work we need to do on Interior appropriations. If we delay it, we will be in the same position and have to go off it at 12:15, it just confuses and complicates the whole process.

S9362

CONGRESSIONAL RECORD—SENATE

September 16, 1997
We have asked the managers of the Interior appropriations bill—now we have interrupted them—to come to the floor. They are scheduled to be on the floor. I know the Senator from Iowa is working to try and get an amendment included. I feel confident that will be done if we can. At this time, I have to object to the expansion of the unanimous consent request that was offered by the Senator from Massachusetts and support the request that was made by the Senator from Vermont.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Mr. President, under those circumstances and to accommodate the Member, I will not press this, although I do think we will have an opportunity to address these issues later in the morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 1998

The PRESIDING OFFICER. The clerk will report the Interior appropriations bill.

The legislative clerk read as follows:


The Senate resumed consideration of the bill.

Pending:

Ashcroft amendment No. 1188 (to committee amendment beginning on page 96, line 12 through page 97, line 6) to eliminate funding for programs and activities carried out by the National Endowment for the Arts.

Mr. LOTT. Mr. President, just so we will be clear what we have agreed to, Senator Gorton and the other manager of the bill will be here to, again, further fill in on the details on the Interior appropriations bill. They have been good partners on this appropriations bill and have worked out some of the areas where there have been disagreements, but there will be amendments and, I presume, votes throughout the day on a number of issues, including the National Endowment for the Arts issue, perhaps on some mining issues. I understand perhaps the Senator from Arkansas has an amendment.

But we need to make progress on the Interior appropriations bill because we hope to finish it tonight or tomorrow and then go to FDA at some point. I hope we can work out a reasonable agreement where we can complete the debate on the Food and Drug Administration reform bill, and we hope to then pretty quickly, either late this week or early next week, go to the District of Columbia appropriations bill. That would be the 13th and last appropriations bill that we would have to deal with this session, and then we could get the rest of next week and the next week on adopting conference reports to the appropriations bills. We will need to move them very quickly.

It will be my intent to try and hold time and focus on getting those conference reports agreed to.

I appreciate the cooperation of all Senators as we try to accommodate one of our most beloved Senators who has a problem this morning, and we will begin with the Interior appropriations momentarily. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GORTON. Mr. President, I ask unanimous consent that the order for the quorum be suspended.

The PRESIDING OFFICER. (Mr. SMITH of Oregon.) Without objection, it is so ordered.

Mr. GORTON. Mr. President, we are now on the Interior appropriations bill. On the very first vote on that bill will be on the Ashcroft-Helms amendment to strike the appropriation for the National Endowment for the Arts. There has been discussion of several other amendments relating to that. I believe this amendment to continue that debate until the cloture vote at noon. I know that the majority leader hopes, and I hope, that shortly after we get back on the Interior appropriations bill, after our FDA vote, that we will begin to vote on amendments relating to the National Endowment for the Arts. In any event, that is the subject at the present time. I invite all Members who are interested in any of the amendments on the National Endowment for the Arts to come to the floor and speak on that subject between now and noon.

Mr. GREGG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, do you have the floor?

The PRESIDING OFFICER. The PRESIDING OFFICER. The Senator from New Hampshire?

Mr. GREGG. Mr. President, is time controlled?

The PRESIDING OFFICER. There is no time controlled.

Mr. GREGG. Mr. President, I wish to rise in support of the bill which has been brought forth by the Senator from Washington. I think he has done an extraordinary job in developing this appropriations language in this bill relative to the Interior and various departments which the Interior impacts. I especially want to thank him for his sensitivity relative to the Northeast.

There is a different view in this country between the Northeast and the West as to what issues that involve land conservation and the question especially of protecting lands, public lands. In the Northeast, especially in northern New England, we are still struggling with the fact that we did not have an additional national forest. We have a spectacular place called the White Mountain National Forest in New Hampshire, and it is the most visited national forest in the country. In fact, it receives more visitors per year than Yellowstone, which is a very important national park. Indeed, it is so close to the megalopolis of New York, Boston, and Washington.

It is an extraordinary place, but to maintain it and to maintain its character, it requires that we continue to address some of the inhaling issues around the national forest, and the Senator from the West has been sensitive to the Senators from the East on those issues. I thank very much the Senator from Washington for his sensitivity in allowing us to go forward in this bill and complete the purchase of a very critical piece of land called Lake Tarleton in New Hampshire.

In addition, he has assisted us in a number of other areas in this bill, and I thank him for it.

I also want to talk about a position that has been brought forward in this bill relative to the National Endowment for the Arts, because I think the Senator from Washington has reached the appropriate balance in the language which he has put in this bill relative to the National Endowment for the Arts.

The National Endowment for the Arts, as we all know, has been a lightning rod of controversy, especially on the House side, less so on our side of the aisle, because of some of the things that the Endowment over the years has funded, which have been mistakes, to say the least.

But that fact is that there is a role, in my opinion, it is a limited role, but there is a role for the Federal Government and for State governments in assisting the arts in this country.

Arts are an expression of the culture of a country or a nation, an expression of the attitude, personality, and the strength of a nation. The ability to have a vibrant arts community in a nation is critical, I believe, to the good health and the good education of a nation.

The Federal role, in participating in this, should be one of an incubator. The Federal role should not be the starter of the initiatives. And the dollars which are put in this bill for the purposes of assisting the NEA and the Humanities Council are just that—they are startup dollars.

Essentially, these dollars multiply two times, three times, sometimes five times their basic number.

Mr. HUTCHINSON. Would the Senator yield for a question?

Mr. GREGG. I am happy to yield to the Senator from Arkansas for a question.

Mr. HUTCHINSON. The Senator explained some, I think, valid points concerning the role of our Government support for the arts. My question concerns the very, very high administrative costs that the National Endowment has experienced, approaching 20 cents on the dollar in administration, and the fact that the distribution of the funds from the National Endowment have gone primarily to very few cities in the country. In fact, I think one-third of all of the direct grants go to six cities in the United States. And the fact is that the Whitney Museum in...
one exhibit received $400,000, received as much as the entire State of Arkansas last year.

So my question is, if we are to continue a Government role in funding the arts, would it be better to eliminate the National Endowment, block grant those funds directly to the States, cutting out the 20 percent in administrative costs and the inequities in the funding formulas for the funding decisions of the National Endowment—and of course I have offered an amendment that would do exactly that—and provide 45 of the 50 States with more money for the arts than they currently receive under the status quo approach that we currently have?

Mr. GREGG. That is a good question. I think it is one of the questions which we need to answer as we go forward with this bill. And there are a number of amendments—I think the Senator has one; and I believe there are other Senators who are offering them—as to the proper allocation of the dollars between the States and between the National Arts Council which administers the Federal money.

But if I can come back to that point, I want to talk generally about the need for Government support of the arts; and then in the allocation area I would like to come back to that. Because I think, first, we have to reach a consensus that there is a need for any dollars in the arts community to come from the Federal Government or from the State governments, and that consensus is long way from being reached. Certainly on the House side they appear to be very resistant to that.

My view is, as I was saying earlier, that there is a need for the Federal Government to play a role as basically the initiator of arts activities, as the incubator that allows the multiplier to occur that creates funding for the arts. As a Senator from New Hampshire I had the same issue before me as to whether or not the State government should be involved in funding the arts. And at a time when we were having the most severe economic downturn in New Hampshire history, the Governor of the State of New Hampshire, regretfully, and we were having to curtail our funding in a variety of areas and cut them back dramatically. I maintained the arts funding, in fact increased a little bit in the State because I felt strongly that, first, it gave definition and it gave a way of viewing our culture that was critical and, second, it also had a very positive impact, especially in New Hampshire, on our tourist industry.

The arts—performing arts especially; but all forms of arts—go hand in hand, at least in New Hampshire, with the ability of the tourist industry, which happens to be our largest employer, to be a successful and vibrant industry.

So there is an economic benefit of significant proportions to having a strong arts community. The investments in these programs and the Federal money that the Government makes in the arts community pays back not only in the way of getting more people involved in the arts, getting more schoolchildren involved in the arts, getting more parents involved with their kids in the arts, but also in the manner of producing economic activity which is fairly significant.

The Senator from Arkansas has raised a very legitimate issue. I know his amendment raised this issue, an issue I raised in committee as a member of the authorizing committee. I sit on both the Appropriations Committee and the Senate on the Appropriations Committee. But he has raised the issue, what is the proper allocation here? I think that is proper for the Senator from Arkansas. How much of the money should be retained with the central arts planning here in Washington and how much should go out to the States?

I have always felt a larger percentage should go out to the States because I think that you get more benefit for the dollars spent at the State level. Therefore, a change in the formula would be something that I might well be amenable to. I proposed such changes in committee. But I do think there is also a role, and I do not happen to believe we should eliminate a central arts council that manages a percentage of the dollars out of Washington.

Why is that? Basically because there are a number of national efforts which do transcend State lines which need to get their funding out of a national fund as versus out of a State fund. For example, I believe the No. 1 item chosen by the NEA this year to fund is new museum initiatives that really should be supported, particularly good job on and, second, in support of the basic thrust of his proposals relative to the endowments which are going to be the most controversial items I guess we will be hearing about on the floor. I yield back my time.

Mr. HUTCHINSON addressed the Chair.

Mr. HUTCHINSON. Thank you, Mr. President.

Just responding to some of the comments of my colleague concerning the National Endowment for the Arts and the need to preserve and maintain that national entity, I think that if the record is examined, as it has been examined by the General Accounting Office and the inspector general’s office, that the record of the National Endowment is not only defensible but fails to justify its continued funding and continued existence.

The issue of whether or not the Government plays a role in funding for the arts aside, the best means of providing the limited funding, the $100 million approximately that has been appropriated for arts this year directly in the NEA. I think it is clear that that money would be best used by eliminating the existence of the National Endowment and allowing the funds to flow directly to the Governors, to the various States for distribution to those programs and the proper artists and those artists within the States that are most deserving.

In fact, the notion that we are better off with a national endowment that
funds six States disproportionately, that funds certain congressional districts and certain States disproportionately, cannot be validated and cannot continue to be justified.

We have a General Accounting Office report indicating that the administrative costs of the NEA, at almost 20 cents on the dollar, is higher than most other Federal agencies, much, much higher than the National Endowment for the Humanities.

The mission statement for the National Endowment is simply that they are to broaden access to the arts. In effect, they are mandated to provide arts to underserved areas in this country. Yet, where the National Endowment today is sending those funds, it in no way corresponds to the mission that they have been given by this Congress to serve those areas which need, if you will, culturally deprived or which have less access to these arts programs.

Six cities getting over one-third of the direct grants from the NEA cannot be justified. When we had—and the chair indicated that this morning to our hearing on the National Endowment in April, and Jane Alexander came in and testified before us, I questioned her as to why, in view of the mission of the NEA to provide arts for underserved areas, in view of that mission, why, out of 12 grant proposals from the State of Arkansas last year, was only 1 approved and the Arkansas Arts Council got approximately $400,000 last year. That equates to little more than $50 per grantee for single exhibits across this country.

Her answer was that it is only in certain select States that we find the environment such to foster the arts. And she gave the analogy of growing apples. She said, apples grow everywhere, but there are certain areas of the country in which they are more productive. I think the implication that there are parts of this country that do not have potential is quite wrong. There are parts of this country that among their populations do not have those ready to blossom into writers and sculptors and authors, I think, is the very epitome of the elitism that the American people find so offensive by the National Endowment.

So to my colleagues who believe that there is an important role that the Government plays in subsidizing and supporting arts, to those of my colleagues who feel very adamantly that we must provide support to culture and to the arts in general in this country by providing some seed money, I ask you to consider the possibility that we would be far better off eliminating the controversy and I think indefensible (National Endowment, eliminate the NEA as it has traditionally existed, and allow that appropriation, exactly the same amount of money, the $100 million to be sent directly to the States on this basis: A $500,000 distribution to every State, $200,000 to every territory, the remainder of the appropriation to be distributed on a strictly per capita basis.

I ask you, could anything be more fair than that? If we took that simple formula, and we said that there will only be 1 percent spent for administrative costs on the Federal level, that the Department of Treasury can spend no more than $1 million to write those checks, that the councils or the State legislatures or the Governors can spend no more than 15 percent in overhead, that if we adopt that simple formula, the result is that 45 of the 50 States will come out ahead, that 45 of those States will have more resources to fund arts in their States than under the current status quo which this bill, with all due respect, maintains.

I simply ask my colleagues in the Senate, how can we, with a straight face, no matter which side we are on, the concept of whether the Government ought to be involved in the arts, how can we, with a straight face, face our constituents and say, we are going to define administrative costs, we are going to defend one-third of the grants going to six cities, we are going to defend three-fourths of the grants going to congressional districts represented by Democrats?

I just want to tell you, Mr. President, I do not believe that congressional districts represented by Democrats in this country are intrinsically less cultured or more culturally deprived or in need of those arts grants than those congressional districts that happen to be represented by Republicans. Yet there has been a clear bias, with 75 cents out of every $1 going to congressional districts represented by Democrats.

It has been very selective funding by a group of elitists in Washington, bureaucrats in Washington, who make themselves the arbiters of what is good art and what is culture and where it should be funded.

So I say consider an option that would say we will end the National Endowment, we will block grant the money to the States on a fair, fair, fair formula based upon the resident population. The result is that 45 States are going to have more money for the arts, more money to help the local writer, more money to go to the schools for education programs in the arts, more money to help that struggling artist who may not have an opportunity and may not happen to live in the six blessed cities that have been honored by the NEA with over one-third of the grants.

So when this amendment is debated and when this amendment is voted on, I trust later today, I ask my colleagues to look at that breakdown to look at that chart, and to consider the fact that their State will come out ahead, that their Governor, their State legislature, or their State arts council will have more money to support their local efforts that the base of support, and are less needy and less dependent upon any kind of Federal help than, say, the University of Arkansas or the University of Central Arkansas, or the University of Arkansas at Pine Bluff, or the many other fine institutions in Arkansas that would be able to work with our local schools and the Arkansas Arts Council, which received just a little over $400,000 last year. That was all the State of Arkansas received. The Whitney Museum, by itself receives almost as much as the State of Arkansas, and if I am correct, I believe the State of Alabama was in a similar dilemma.
Mr. SESSIONS. Whitney funding almost matched the entire funding of the State of Alabama. It is a concern.

We have one of the finest Shakespeare festivals in the world. As a matter of fact, the Shakespeare theater in Montgomery is well renowned, and people have contributed very heavily of themselves. The former Postmaster General Winton Blount had gone beyond the call of duty in helping create this facility. We only got $15,000 for that premier, world-class facility that is supported substantially by the gifts of local residents.

Let me ask you, if the money came to the State, would they be able if they so chose to give more money to the Shakespeare theater in Montgomery? Would they be able to do that?

Mr. HUTCHINSON. That, of course, is the whole concept behind our amendment—local control. Send the money back to the States, the Governors, the State legislatures, and the State arts councils would have the discretion to increase funding.

In the case of Alabama, and I do not have the exact numbers in front of me, but the amount of resources available to the State of Alabama would be greatly increased under the block grants approach in which we send a $500,000 grant to every State, and then simply distribute it on a per capita basis. That would allow the State of Alabama to give much more to the Shakespearean theater there in Montgomery.

So the needed resources would be much more available, and that would be controlled locally. So insomuch as there was local support in Alabama for increased funding, I think the opportunity would be much enhanced.

I was interested to hear your comments yesterday quoting Anthony Hopkins and his appreciation for that Shakespearean theater there in Montgomery.

I need the resources would be much more available, and that would be controlled locally. So insomuch as there was local support in Alabama for increased funding, I think the opportunity would be much enhanced.

Frankly, I am puzzled why anyone would oppose the approach that you and I are offering. I can understand the philosophy of local control. I think the opportunity would be much enhanced.

Mr. SESSIONS. Let me ask the Senator from Michigan if he would mind something I think we failed to think enough about. Mr. President. This money that is being spent in our States, the decision of where and how to spend that money primarily is being decided by a group of people in Washington. Under this procedure, we would have 45 States have more money—correct me if I am wrong—45 States will have more money, but they will also have more control and be able to make the decisions that they feel would be the best use of that money.

Mr. HUTCHINSON. Senator Sessions, you are exactly right. One of the areas that this Republican-controlled Congress has pushed for most strongly has been local control. In welfare reform, in a whole host of areas, we said, “Let’s flow that power back out of Washington, back to the States.” There is no better example, I think, of what happens when you do that than in the area of the arts. We not only have a 20-percent overhead that we are paying just by having this bureaucracy of almost 150 employees dispensing this money, but we have a small group that makes decisions on what will be funded in the country. If you will, making themselves the arbiters of what is good art, and the control of our constituents is minimized because of the distance, the inability to really affect the decisions that are made.

So, yes, I think the citizens of Alabama, the citizens of my home State of Arkansas, will have much greater input dealing with the Arkansas Arts Council or the Alabama Legislature, or the Governor’s office than trying to affect the decisions that are made in Washington, DC, by a select group.

Mr. SESSIONS. I understand one of the grants that was reported yesterday went to Philadephia Academy, one of the most exclusive private prep schools, I believe. I just want to understand the reference to be. Do you think there are schools, public schools, throughout Arkansas and Alabama and other States in this Nation that would also likewise be able to make a claim for funds, or is that one of those receiving any moneys from the National Endowment for the Arts in Arkansas and Alabama? In Alabama no private or public schools are receiving money as happened in the Northeast.

Mr. HUTCHINSON. I believe those local schools in rural communities across our States and all across this country have a much more legitimate claim to those funds than where those funds have gone under the current status quo of the NEA.

I grew up in a town with a population, when I lived there, of 894. I can remember in junior high school it being one of the great thrills when we were able to take a field trip 40 miles to the University of Arkansas and watch a Shakespearean play. That is the first time I had ever seen a Shakespearean play.

Those kind of opportunities to the small communities of this country is what we are trying to do that if we would eliminate the Washington bureaucracy and allowed that money to flow back to the States.

The objectionable art, Senate Sessions, that you cited yesterday, that Senator Helms spent a great deal of time on, that has characterized much of the debate around the NEA in recent years—if a local arts council, the State arts council, or State legislature or Governor made a decision to fund something that the mass of the people in a community or in a State council, only if you, they will be more responsible in that State legislature or that State arts council, or that Governor will be far more responsive to the complaints of the people than a faraway bureaucracy in Washington, DC, in some ivory tower making those decisions.

Mr. SESSIONS. Mr. President, I agree with that and I support this bill wholeheartedly.

I had an outstanding conversation with the three leaders and directors of three orchestras in Alabama. They are concerned about funding. They need more funding for art. It helps them. They do not want to lose that. I can understand that. I asked them if we could come up with a way that will leave the bureaucracy and put more money in your hand, with more freedom to spend it as you wish, would you support that? And they said, yes, of course they would.

I know some people believe and have committed themselves to supporting the National Endowment for the Arts, National Endowment for the Arts in a good and healthy way, it is not doing a good job of putting money to the arts, it is not invigorating the arts and providing leadership for an enhancement of the good and beautiful and fine in America. To in fact, participating in a degradation of the quality of art in America.

What we need to do is make sure it is done right. I believe the people at the Alabama Arts Council, the arts councils in the other States around this country, if given the opportunity, would spend that money wisely. They would be much less likely to give it to the arcade, the pornographic, the bizarre, and the just plain silly that is so often happening today. It is just not acceptable.

It is time for this body to follow through. It is time for this body, after years of begging and pleading with the National Endowment to do a better job to manage their money better, to put an end to it and make sure that what we do actually supports the arts in an effective way. That is why I support this amendment.

I am so proud of the Senator from Arkansas for his outstanding work on it, the Senator from Michigan, Senator Abraham, and the Senator from Wyoming, Senator Enzsi, for their outstanding teamwork in putting this proposal together, which is a win-win situation for all America. It puts more money in the arts, and it will eliminate waste, bureaucracy, and silly funding projects.

I think it is a good bill, and I urge my colleagues to support it.

I yield the floor.

Mr. DOMENICI. Mr. President, I want to use just a few moments this morning to talk about this appropriation bill that is pending before the Senate and two projects under the Land and Water Conservation Fund that the distinguished chairman, Senator Slade Gorton, had put into the bill but subject them to prior authorizations. The one is, in fact, in this acquisition in California which could cost $250 million; is that correct, Senator Gorton?
Mr. DOMENICI. And the so-called New World Mine in Montana, which is an effort to acquire a mine before it is mined. That is in Montana. I believe it would cost $65 million.

Now, I move on the floor of the Senate to tell the Senate that these projects are good, should be done, or should not be done. But I am here to tell them absolutely and unequivocally that if the administration, through what is called the management chart in here that says what this fund is about, is about. Essentially, it says that we have decided that $700 million can be set aside, at the option of the Congress, to be used for land acquisition, and a budget flow even shows how it will be spent. And the language says the $700 million, if spent for priority Federal land acquisition, can be done in excess of the caps for discretionary spending. That is why the U.S. House did not even put it in their appropriations bill, because there is nothing in this agreement that says that if you include $700 million for land acquisition, then when you spend it, the budget credits it to the appropriations committee.

Mr. DOMENICI. But I ask the Senator from New Mexico, is there nothing there that mentions any specific project?

Mr. DOMENICI. I assumed everybody would be looking at the agreement. You are correct. Verbally, I state there are three footnotes, there are two charts, and nowhere in that do these two projects appear. They are not mentioned.

Mr. GORTON. I thank the Senator from New Mexico.

Mr. DOMENICI. Senator, I want to tell you one other thing. The two instruments that judge our budget responsibility, vis-a-vis the President, what have we agreed to do with our President—frankly, they are not enforced, because the President has authority. What we have agreed to is that if you look at page 23 of the agreement, and is more specific than the budget agreement itself, is that not correct?

Mr. DOMENICI. No question. But you might say, in this respect, it is contemplated that if the agreement, and the budget, and the House, and the Senate, at some point in time wanted to implement the $700 million fund, they would at some time have to decide what they are going to spend it on. At that point in time, however they decided, the White House and Congress would engage in a political dialog in the normal way, with each having its strengths; namely, a vote here, and namely, the President says I don't want it, do it another way; that is typical. That would be one part of it. The other part of it is how would you decide how to spend it?

Mr. GORTON. So, I ask the Senator from New Mexico, then the bill that I drafted and is being debated on the floor here today regarding appropriation, that the U.S. House includes both the $700 million for the land and water conservation fund and a specific mention and, therefore, a degree of priority, for the New World Mine and for the California redwood reforestation. That project is not in the budget resolution, which I will talk to in a moment, was approximately a $74 million increase for Indian tribal priority allocation funding. Senator GORTON had a meeting and asked, “Is that a priority agreement that we agreed upon?” I said, “Yes.” He said, “So it will be funded.” Is that not right?

Mr. GORTON. The Senator is correct.

Mr. DOMENICI. Now, the only other instrument that has anything whatsoever to do with this 24-page historic agreement is the budget resolution itself because what we chose to do is put in the budget resolution the priority requirements of this agreement. So that if you look at page 23 of the budget resolution, you find a description of the $700 million for land acquisitions and exchanges, but no mention of any single project—not a single project mentioned. It merely states very precisely what I told the Senator, as I will say when I say how the $700 million was to be set up. That is what it says.

But conversely, throughout this agreement, throughout this budget resolution, when we have agreed on a specific program in this agreement, it is found in this resolution. So, Senator, if you need to look at this agreement and say, what did the Congress and the President say about Head Start, that might be a question you could put to me. I would say that we agreed in this agreement, and that the President, Senator glamorous priority. Lo and behold, you will find in the budget resolution that Head Start, in the function on education, is listed, and guess what? The dollar amount that we agreed upon is in the budget resolution.

Now, frankly, I think it is absolutely patently obvious that we have agreed to these two projects—and I repeat that I am not speaking the Senate will actually have them before us in a proper mode. I am not sure how I will vote in the committee that authorizes them. But the pure simplicity of what I have just explained would say that if we agreed to these two projects, you would find them in one of these agreements. In fact, if you found them in the 24-page agreement, you would find them in the function of the budget that funds these kinds of projects, and they would be stated there. Now, I note the chairman is on the floor with a question. I am pleased to yield.

Mr. DOMENICI. Senator Gorton, the agreement, throughout this budget resolution the $700 million for the land and water conservation fund is, in fact, in that agreement, that is correct?

Mr. GORTON. I thank the Senator from New Mexico, is talking about the very small and two projects appear. They are not mentioned.

Mr. DOMENICI. Senator, I am going to turn to that right now. It is in the agreement. Anybody who wants to look at it can look at page 19. There is a chart in here that says what this fund is about. Essentially, it says that we have decided that $700 million can be set aside, at the option of the Congress, to be used for land acquisition, and a budget flow even shows how it will be spent. And the language says the $700 million, if spent for priority Federal land acquisition, can be done in excess of the caps for discretionary spending. That is why the U.S. House did not even put it in their appropriations bill, because there is nothing in this agreement that says that if you include $700 million for land acquisition, then when you spend it, the budget credits it to the appropriations committee.

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this argument most rational is that if you didn't put the $700 million in at all, there could not be a letter sent around saying "you violated the budget agreement."

As a matter of fact, the letter being sent around says that I want everybody to know I am trying desperately to get everybody to comply with the budget agreement. We are not complying in every respect. Nobody is finding this Senator running around saying "Mr. President, I think you should violate your agreement," I have never said anything to that effect. Nobody else is saying you don't have to. Maybe others are, but I am not. Frankly, when the administration, under letter of September 11, a statement of administration policy, on the first page of that communication, it says: "In addition, the committee bill contains provisions that violate the Bipartisan Budget Agreement, such as the provision to require additional unnecessary authorizing language for key land acquisition in Montana and California."

It urges the Senate to strike that. They will, they say, that we strike it, but we are not striking it because it violates the budget agreement; we may or may not do it for some other reason. So, Senator, I wanted to come down here and make sure, since many Senators have posted bills and asked me if we agreed to these two projects, my answer is no.

Now, are we forbidden from agreeing upon them and the $700 million to be used for them? Absolutely not. You are not doing that with that. As a matter of fact, you spend it. But you are saying that before we spend it we want to see what the authorizing committees say about that. I believe, to assume that you cannot authorize a project for the land and water conservation fund, which would give its resources from the $700 million, is arguing an uncertainty. I mean, that can't be. We never said anything about that. Congress retained that right. Anything we didn't agree upon the Congress can do. It is just that the can't do anything inconsistent with it.

I could go on, Senator, but I think the Senate will take my word that if you look at the agreement and find specifics that are priorities, you will find them in the budget resolution, which this Senate passed overwhelmingly. Theres a lot of things in it that Senators said they didn't know were in it. That is not my fault. I will tell you that specifics like Head Start and specifics like a new program for literacy are found in the agreement as priorities, and they are found in the resolution—resolved that—priorities such as these shall be funded to the extent of so many million dollars.

Mr. GORTON. The Senator from New Mexico believes, under those circumstances, we are obligated to keep our part of the agreement?

Mr. DOMENICI. The Senator from New Mexico feels that if we follow those, that a letter like this one from the administration, under cover of September 11, could clearly say this bill does not fund a priority item that was agreed upon. Therefore, it violates the budget agreement. I would not be here saying the correspondence is inaccurate, incorrect. It would be wrong. In this case, it is not.

Mr. GORTON. I thank the Senator from New Mexico. Mr. DOMENICI. I just ask the Senator, because I don't intend to speak longer and clutter the RECORD unnecessarily, but would he think I should make the bipartisan agreement a part of the RECORD, Mr. GORTON. Why don't you make the relevant page of the bipartisan agreement a part of the RECORD.

Mr. DOMENICI. Mr. President, I ask unanimous consent that page 19 of the agreement between the executive branch and the Congress be printed in the RECORD for purposes of showing how the priority land acquisition was described on the page of the agreement.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

### Environmental reserve fund

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<th>Outlay increases in millions of dollars</th>
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<td>Orphan share spending</td>
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5-Year Spending ................................ 1,000
10-Year Spending ................................ 2,026

The proposal mandatory spending for orphan shares at Superfund hazardous waste cleanup sites. Orphan shares are portions of financial liability that is allocated to non-Federal parties with limited or no ability to pay. The funds will be reserved for this purpose based on the assumption of a policy agreement on orphan share spending.

### Priority Federal land acquisitions and exchanges

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<th>Outlay increases in millions of dollars</th>
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<td>Priority Federal Land Acquisitions and Exchanges</td>
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5-Year Spending ................................ 700
10-Year Spending ................................ 700

Under this proposal, up to $15 million would be available from the Land and Water Conservation Fund (LWCF) to finalize priority Federal land exchanges in FY 1998 and FY 1999. Funding from the LWCF for other high priority Federal land acquisitions and exchanges (totaling $360 million) would be available in fiscal years 1999 through 2001.

The funding will be allocated to function 3000 as a reserve fund expenditure.

Mr. DOMENICI. I don't choose to put the budget resolution in the RECORD because it was adopted. I assume if anybody wants to refer to any changes in education or to find specifics on the crime section where we obligated funds for the FBI, et cetera, I assume you can look in the budget resolution and find it.

I yield the floor.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I have not heard every speech on the question of the National Endowment for the Arts. I know about the principal amendments. Frankly, the amendments that most intrigue me are those that propose for block grant. I am not sure I am going to vote for anything that provides for a block grant, based on the knowledge that these block grants that are being made. But I will come back to that in just a moment.

I would like to share with my colleagues one of the reasons I am a strong supporter of the National Endowment for the Arts. I think it provides the kind of cultural benefit that is not only sorely lacking in this country, but is diminishing. Mr. President, $100 million represents one-tenth of 1 percent of our $1.6 trillion-plus budget. That is 38 cents for every American citizen to provide programs that enrich the culture of this Nation and give a lot of youngsters who would not otherwise have access to the beauty of the absolute, abject joy of enjoying music, good literature, and dance.

I can tell you that no nation has ever really prospered well that didn't have a culture that embraced the performing arts and the fine arts.

I am sorry Mapplethorpe ever got a grant. That is the thing that set off the firestorm in the country, from which we have never recovered in the Congress. But let me go back.

I grew up in Little Rock, AR, with a population during the Depression of 851 people. The only cultural enrichment we got in that town was a high school band. It was started when I was a sophomore in high school. So I took band and became a trumpet player and later became trumpet player in the University of Arkansas band as well as drum major of the Razorback Band—because I had learned some music in the high school band. I might add that we were unusually fortunate because we had an unusual band director, a brilliant man. He used to gather some members of the band at his home in the evening. We listened to great music—Mozart, Bach, Beethoven, Sibelius—and that is when I developed, as a very young teenager, a keen appreciation for symphonic music. We went to Jackson, MS, to a regional band contest, and our sextet won first place. Not only were we learning something about good music, but we were also learning something about leadership, about self-esteem, and his pride out of this little town.

So when I went to the University of Arkansas, as I said, I was in the band, sang in the university chorus, went to all the drama presentations, and then I went into the Marine Corps.

After the war—I told this story a couple of years ago on the floor of the Senate—I was waiting to come home. I was in Hawaii. One day I saw a bulletin saying that anybody interested in Shakespeare should show up at such and such a barracks this evening at 7 o'clock. So I went. Lord knows I had
never been exposed to Shakespeare. The man who had put the sign up and who was going to teach Shakespeare turned out to be a Harvard professor of Shakespearean literature. He had a tape recorder. Tape recorders were unheard of then. I had never seen a tape recorder, and I first thought had to be spoken into one, and therefore, I didn’t know what my voice sounded like.

So, after giving us about a 1-hour lecture on Shakespeare, he took his tape recorder and he said, “I am going to deliver lines from Shakespeare’s Speech to the Players.” He had a magnificent baritone voice with that Shakespearean accent. He spoke into his microphone, “Speak the speech, I pray you. And then he went on. I could tell it to you now. I do not want to bore you with it. But I can still remember every word of it.

So, when he played it back, it was so beautiful to hear this mellifluous voice. Then he handed it to me and said, “Do it.” He put the lines in front of me, and I spoke into the tape recorder. Then he played it back. I could not believe how poorly I spoke.

You know, I took a vow that evening that I did not want to sound like that. I wanted to have a rich tone of voice like he had. But more than anything else, I discovered that there was a lot of literature that I knew nothing about that could be very enriching.

So, I studied diction and debate. I began, on occasions when I got a chance, to go to all the drama presentations. Most people in this audience are frustrated actors. But my point is all of that such a powerful influence on my life. I daresay, if it had not been for those experiences, I would have never been Governor of my State, and I certainly wouldn’t be standing here as a U.S. Senator. These are the sort of experiences that the National Endowment for the Arts funds for many youngsters, experiences that they would never otherwise have.

When I was Governor, my wife was looking for some way to use her position as First Lady to benefit the children of Arkansas. Nancy Hanks, who was then Chairman of the National Endowment, came to Arkansas at Betty’s invitation. Betty talked Nancy Hanks into giving her a $50,000 grant to do a small pilot program of art in the first grade. Betty had been an art major. She thought it ought to be exposed to art in the first grade.

So, the National Endowment, because of her appeal to Nancy Hanks, gave her $50,000, and she started a few programs. Today programs of that sort are commonplace. Every first grade in Arkansas has art. It is mandated now.

She had a little left over from the $50,000, so she decided she would take it down to the prison and see if any of the inmates had any talent for art. It was absolutely amazing how much talent the inmates had. All I could think about was how many of those people might not have been in prison if some-body had picked up either their artistic talent or maybe some musical talent that had never been explored.

Do you know something, Mr. President? When I became Governor of my State, the prisons were in such horrible conditions that we said that we could not control the Federal courts. We couldn’t do anything in the prisons without Federal court approval, they were so terrible. I was sort of hesitant to go down there. But I went, I was being held accountable to improve the condition of our prisons. You know what Winston Churchill said once that you can tell more about a civilization by the way they treat the elderly than the condition of their prisons than anything else. It is a strange thing but probably true.

So, I started going down to have lunch with the inmates. I would visit with them. I visited with the hardened killers that were on death row. I can tell you, I don’t believe in all my conversations with the inmates in the Arkansas prisons that I ever visited one who had a role in the senior class play in high school, who played in the band, who had a college degree—though there were as many who owned their own home. Nobody is shocked at that. We know who is in the prisons—people from broken homes, people who are uneducated, and people who never had a dog’s chance as far as learning anything about the visual or music.

I can tell you that the $100 million we spend on this program may be the most productive money we spend. It is tragic that it is not at least 10 times more than it is. You think about the greatest Nation on Earth, the United States, spending $38 cents per person per year to support the arts while Canada and France spend $32, almost 100 times more per person than we do. In Germany, it is $27 per person. My colleague and I share a concern. I heard his argument on the floor at times and think about it a little differently than I would. But certainly his argument about how much our home State gets is, in my opinion, a valid argument. We got about $400,000 this year. I think that in the past we have gotten as much as $500,000. But, if you disbursed the $100 million of the National Endowment for the Arts money according to population, we would get $1 million. We have 1 percent of the population of this country. We would get $1 million. We feel a little slighted.

But there is another dimension to it. That is, if we are going to do block grants to the States, some money should be held aside for national programs that serve all of the States, such as PBS, public broadcasting. I see a lot of fine shows on PBS that are partially funded by NEA grants. In my opinion, many of those shows would not be there for all to enjoy without that funding. If you didn’t have the National Endowment for the Arts, programs that benefit everybody, even National Public Radio in Alaska and West Virginia, would not exist.

Second, the national programs that are funded by the National Endowment for the Arts raise an average of $12 in matching money for every dollar that NEA provides. In my State, we leverage $3 in matching funds for all the grants to programs that benefit Arkansans. And we are proud of that.

So, I am not so sure that, if you put these block grants out, you are not going to wind up losing a lot of matching dollars.

Senator Kay Bailey Hutchison from Texas has an amendment that has some appeal to me. It provides 75 percent of the money in block grants. I think maybe 60 percent for openers would be better. So I am totally opposed to that. But I am not going to vote for any proposal to block-grant money that does not carry with it a mandate for matching money. If we are going to match money, as we do in Arkansas now, $3 for every $1, why not require the same block grant recipients?

When you consider how much money the arts produce in this country—between $500 million and $1 billion—and you think about how much income tax we collect a year from the arts, we are big winners. The $100 million is peanuts compared to the $3.4 billion in revenue the arts generate in this country.

I am not going to take much more time here. I see we have other speakers wishing to speak. But there are some national programs that we need to continue funding with this money. The YMCA is putting culture programs in its facilities throughout the country with NEA support. There are a lot of NEA-funded regional dance tours, a lot of national dance tours, and programs for children everywhere.

Incidentally, when I played in the high school band we thought we were pretty good. At the bi-State band contest with Oklahoma, the Iowa State band performed on the stage of the Fort Smith High School. I had never heard a band really play. We only had 30 members in our band. Here was this Iowa State band with 150 members, and when that conductor brought his baton down, I thought I was going to faint. I had never heard such music. So it was, the first time I ever went to a symphony, I am telling you, these things are important to the culture of this country. I do not for the life of me understand the antipathy that some of the Members of this body can express toward the arts. They are absolutely essential and basic to the character of this country. It is important that we give a lot of citizens of this country access to the performing and fine arts. That would never happen if it were not for the NEA.

I look forward to the day—I will not be here, Mr. President, after next year—but I yearn for the day when we treat this program with the respect and the money it deserves. And, like so many others, I hope you do not let it slip into oblivion, we will pay a very heavy price for it.
I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I can only add a little bit to what the Senator from Minnesota has just said. I wish he would not be leaving the Senate. I have told him that a hundred times, but I will say it one more time.

Mr. President, as a Senator from Minnesota, I rise in support of the National Endowment for the Arts and the National Endowment for the Humanities. I am troubled we are out here on the floor, again defending the Federal role in really supporting the arts in communities all across our country. Some of my colleagues are arguing that, with their block grant proposals to States, they really support the NEA. This will just get the money to States in a more efficient manner, a more timely manner. But these amendments do nothing more—and I think everybody recognizes this—than they cast their votes—than cut off the lifeline of the National Endowment for the Arts. That is exactly what these amendments do. I think that is the purpose of these amendments.

There is a bitter irony to the timing of these amendments, because Jane Alexander has done such an excellent job of reorganizing the Endowment. I come to the floor to recognize her fine work and to support the NEA. When Ms. Alexander was confirmed as Chairwoman of the NEA, she made a commitment that she was going to work closely with the Congress, that she would take necessary steps to reorganize the Endowment, and she has done that and, as a matter of fact, I think her effort has been nothing short of heroic. She has, through her leadership, helped form and lead a NEA that touches the lives of all citizens, regardless of their age, their race, their disability, their economic status or, I might add, their geographic location. Jane Alexander has been blessed with a lifetime of creativity and accomplishment and she has blessed our country with that creativity. She has done a marvelous job of bringing the arts into our classrooms and into every corner of our Nation.

Now, again we are out here having to defend the NEA. The budget is pathetically low. We could do much more to touch the lives of all citizens, regardless of their age, their race, their disability, their economic status or, I might add, their geographic location. Jane Alexander has been blessed with a lifetime of creativity and accomplishment and she has blessed our country with that creativity. She has done a marvelous job of bringing the arts into our classrooms and into every corner of our Nation.

In my State of Minnesota, the NEA has given support to the American Composers Forum, the Minnesota Alliance for Arts and Education, Gray Wolf Press, the Duluth Superior Symphony, the Rochester Civic Music Guild, as well as the nationally renowned Dale Warren Singers, the Saint Paul Chamber Orchestra, and the Guthrie Theater.

In addition, because of support from NEA, national theater and dance groups have visited many rural communities all across the State of Minnesota. The NEA has supported some wonderful partnerships in Minnesota, including a partnership between the Minnesota Orchestra Association and the science museum, which has created an interactive work between actors, scientists, and sixth graders. That is what this is all about.

One grant we are especially proud of that really goes to Minnesota, but goes to the whole Nation—and one of the things that most worries me about these grants is the way in which a grant can go, in this particular case to the Minneapolis Children’s Theater Company—and what they have done is this grant has supported the development and production of a new work which is called the Mark Twain Storybook, which has toured 35 communities in 9 States, from Fergus Falls, MN, to Mabel, MN, to Skokie, IL, offering a total of 73 performances and 5 workshops. This is enriching work.

I just would like to make the point that the block grant amendments are not friendly amendments. As I say, they undercut the very heart of what NEA is about, which is national leadership of the arts in our country. We as a national community make a commitment to the arts. We understand how important the arts are to enriching the lives of all of our citizens. We make it one of our priorities—not much of a priority, because we have had attacks on the NEA over the past few years and it is all of that—but not friendly amendments. Nevertheless, we as a national community understand that we make a commitment to leverage the funding and to get it to organizations to, in turn, get it to communities all across the country.

The block grant proposal takes us in the exact opposite direction. I really do believe that the timing of these amendments is just way off. One more time, I just want to repeat for colleagues that the block grant amendments are—uttered and regardless of the intentions of colleagues, I think the effect of these block grant amendments is to just cut off the very mission, the very lifeblood, the very richness, the very importance of what the NEA is all about.

We are only talking about $100 million. It is an agency that has been severely undercut because of attacks of past Congresses. But I will tell you something, people. The country have rallied behind the NEA. I think in large part because of Ms. Alexander’s leadership. We have an agency that is bringing the arts into classrooms and bringing arts into the communities all across our country. We have an agency which has done a marvelous job of being in partnership with local communities and States, doing a really superb job.

Mr. President, I also want to have printed in the Record a letter from James Dusso, who is assistant director of the Minnesota State Arts Board. He writes in behalf of Robert Booker, who is the Minnesota State Art Board executive director, who is currently away at a conference, making it very clear that the Minnesota State Board is opposed to the block grant amendments, making it very clear that Minnesota, and I think many, many people in the arts community, appreciate the work of NEA, and making it very clear that these amendments, rather than improving NEA’s work, would severely undercut what this agency has been about.

There being no objection, the letter was ordered to be printed in the Record, as follows:


HON. PAUL WELLSTONE, U.S. Senate.

DEAR SENATOR WELLSTONE: I am writing on behalf of Robert C. Booker, the Minnesota State Arts Board’s executive director, who is currently away from the office at a conference addressing enhanced accessibility to the arts for people of all abilities.

My understanding is that the Senate is currently discussing the amount and the type of support to be provided to the National Endowment for the Arts. In that light, I think it is important that you are aware of the following:

The National Endowment for the Arts currently provides over two million dollars to the state in grants to the Minnesota State Arts Board and Minnesota arts organizations.

Since 1994 the Arts Board has experienced a 48% reduction in support from the National Endowment for the Arts. This decrease paralleled the NEA overall budget cuts from $175 million to the current $100 million and reflects their ongoing problems in Congress.

Minnesota is proud of the outstanding collaboration of its cultural institutions and its arts community. The citizens of this State and our corporations and foundations have provided extensive financial support to the arts in order to achieve its artistic level. Within our borders, we are proud to have world-class arts organizations and artists of international stature.

Because of the quality of the arts in Minnesota, we consistently have been ranked third to fifth among all states in receiving National Endowment for the Arts support.

Under a block grant funding structure at the National Endowment for the Arts, Minnesota would drop to sixteenth or lower in the amount of federal support it receives for the Arts.

Block grants would minimize, if not eliminate, any national leadership for the arts in the country.

NEA support historically has been a valuable tool in leveraging matching private support for the arts. Block grants to states would take that tool away from arts organizations, hampering their ability to raise needed private support.

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Mr. WELSTON. I think these amendments represent a different kind of attack. We had amendments to just eliminate the NEA. We may have one of those amendments on the floor now, maybe to eliminate NEA. We have had amendments in the past to severely undercut the funding for NEA.

I just don't know what will satisfy colleagues. Jane Alexander made a commitment to us that she would be very tough in her management. She would do the necessary reorganization work, she would take all of her creativity and use that creativity to make the NEA an agency that clearly was rooted in communities all across our country. And for Minnesota, for rural America, the east coast, west coast, North and South—that is exactly what has been done. So I hope we will defeat these amendments and we can as a Senate vote for a commitment which is a national community commitment that arts and the arts, there are committed to enriching the lives of children, all children in this country, and we are committed to making sure the arts reaches out and touches all of our citizens no matter their income, no matter their race, no matter disability, no matter age. That, I think, is what its mission is all about, and I think the NEA under Ms. Alexander's leadership deserves the strong support of the Senate. I yield the floor.

Mr. GRAMM. Mr. President, today we are for arts. Last week we were for education. Before that we were for housing. In fact, we are in about a 60-year cycle where the way you show you are for something is to have the Federal Government take the money of working Americans and spend that money to invest in art, that you want to let working families decide whether or not you are for the arts. Last week we were for the floor of the Senate is a choice that we are going to take from working people and spend on arts. Why don't we have a debate about who should do the spending?

We have heard a lot of debate about whether or not you are for the arts based on how much money the Government is going to take from working people and spend on arts. Why don't we have a debate about who should do the spending?

I was examining the figures on spending for the National Endowment for the Arts, for the National Endowment for the Humanities, and the Corporation for Public Broadcasting, programs where we are taking money out of the paychecks of working American families and we are bringing the money to Washington and deciding on their behalf that we want to spend it on NEA, NEH, and the Corporation for Public Broadcasting.

We have had a lot of debate about whether we are spending it wisely, whether what is being defined as art with the expenditure of our taxpayer money through NEA is, in many cases, art. I think the vast majority of Americans would say in many cases it is not.

But the point is, if we took those three agencies and eliminated them, we could give an art and entertainment tax credit of about $200 to every working family in America. It is in that context that I want to talk about the National Endowment for the Arts, because what we are deciding today is not that we are for the arts by voting to continue funding NEA. What we are deciding is that by funding NEA, NEH, and the Corporation for Public Broadcasting that we are doing more for the average working family in terms of the arts and the humanities and access to information through broadcasting than they would do if they were able to keep $200 more and spend it as they chose.

Grantd, I am sure there are some here who would get up and say, "Wait a minute, with this $200, we are funding the symphony, and if we let working families keep the $200, they might go see Garth Brooks, they might decide to spend it going to three or four Texas A&M football games." I guess I would argue that families ought to have a right to choose what is art and what is entertainment to them rather than delegating that responsibility involuntarily through the IRS to 100 Members of the Senate.

In a very real sense, this is the choice that we are making. How many families would choose to get an Internet hookup rather than to fund public broadcasting if they had the choice to make? How many families would choose to get the cable rather than to fund public broadcasting? What do we stand for? How many families would choose to get $200 more and spend it as they chose?

So my point is, this is not a debate about whether you are for the arts or not. This is a debate about whether Government should be the final decisionmaker about what is art and what should be funded.

Our colleague from Minnesota said, "Well, this is only $100 million." Well, $100 million is a lot of money.

I personally would like to begin the process of making decisions in Washington so that we could have more decisions made back home. I think part of our problem in the arts, part of our problem in Government, is that too many spending decisions are made in Washington and room and Cabinet tables and too few decisions are made by families sitting around their kitchen tables. The question that we face as Republicans is, if we are not for less Government and more freedom, what do we stand for? If we really want to reduce the size of Government and to let people keep more of what they earn to invest in their own family and their own future, to invest in their own art, to invest in their own entertainment, to invest in their own education and housing and nutrition, if that is what we really want, where do we begin?

We are not eliminating a single program in the Federal Government this year that I am aware of. Not a single program in the Federal Government will be terminated as a result of this budget which will spend a record amount where we are increasing discretionary spending. In the process of deciding that the Government ought to direct more goods and services and where they go.

I don't, quite frankly, know a better place to start than the National Endowment for the Arts. It is not that I am against the National Endowment for the Arts or the National Endowment for the Humanities or against...
Mr. JEFFORDS addressed the Chair. THE PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I spoke at length yesterday. I will try not to beat that record, but I do want to make a few comments.

First of all, if you take $100 million and divide it by 250 million, you come up with about 38 cents a person and that represents what the endowment costs. I think we have to put in focus what we spend on the arts and why we spend it there.

We had some excellent presentations yesterday and this morning on different views of how the money for the Endowment ought to be spent. I guess if you analyzed the Senate, we would have probably 70 or 80 people who say, “OK, let’s spend the money, but we have a different way to spend it.”

A number would spend it with more going to the States. Some would spend it with all going to the States. Others would spend it in different proportions. But I guess that if it was just a question of whether there ought to be that much money out there available, that we would have a big vote, 70, 80 votes in the Senate, and that is what we need to do—analyze and figure out whether the way we are spending it is the best way.

That, I think, is what is being asked of this body, and I think is being asked of the people throughout the country: Are we spending too much on administration? Are we directing too much of the money to the big cities? Are we spending too much in other areas rather than out in the States? So I hope we keep that in mind as we go forward and examine the amendments that we will be faced with.

I would like to point out some of the very excellent points that were made by other Senators yesterday. I think Senator BENNETT from Utah probably made one of the best presentations I have heard on why the Endowments are so important and what it does mean to have your particular program get the stamp of approval. As he stated, it is like the Good Housekeeping Seal of Approval for a program. What this does is allow you to not only utilize the money, the small amount of money you get from the Endowment, but to use that as a fundraiser to be able to let people know, “Hey, this is a good program and it has the sanction of the Endowment and, therefore, you should help us put that program on.” It was an excellent presentation.

We have had others this morning, Senator TIM HUTCHINSON and others, as well as Senator HUTCHISON of Texas, saying, well, you have a good program, but more of it ought to be distributed to States and a lot less of it ought to be spent from Washington.

I spent my time yesterday stating that I don’t think we have a program which would spend more of the money in the area of education, indicating that the studies demonstrate that those people who participate in programs of art and music do substantially better on SATs than those who do not. I think that is something we should take note of. And there are a lot of reasons for that.

Some of the basic problems we have in education is the lack of discipline and respect by students. Both of these qualities come along with the arts and programs with the arts—I delineated a number of those programs that I have viewed as I traveled around the country where students have done exceptionally well, from the east coast to the west coast. When the authorization came up out of the committee, we suggested that NEA ought to look at trying to evaluate and assist the rest of the country, understand which programs do work, what programs are helpful in improving the access to the arts in education.

Also, as I pointed out yesterday, there are many programs which have been successful in the cities around the country in helping those who are impoverished. I mentioned one program in New York City where there was a horrible situation—so many young people had come from homes of violence, where a member of a family had been killed. Through art and art therapy they were able to bring out the horribler experiences in their life and begin to open up a vista of perhaps a life without violence and fear introducing instead hope and other positive things like that.

I think there is a general consensus—or close, a substantial number of Members of this body—that we ought to keep the Endowment but perhaps take a look at how those funds are utilized. So I expect that the Senator from Alaskawill have an amendment along those lines.

Also, I would like to just raise a few things. I did not talk about the importance of the Endowment in extending the benefits of the arts and the benefits of museums around the country.

For instance, the Portland Arts Museum moves out to support the Northwest Film Festival, showcasing the works of artists from Alaska, Idaho, Montana, and Washington; the Paul Taylor Dance in New York received a grant to tour through Alaska, Texas, California; and the Government supported Educational Broadcasting Corporation in New York to put “Great Performances” and “American Masters” on TV...
for the enjoyment of millions. The New England Foundation for the Arts received a grant to bring the “Dance on Tour” program to Connecticut, Maine, New Hampshire, Rhode Island, Vermont, and Massachusetts. The YMCA of Chicago received a grant to expand its Writers Voice center—writing workshops for young people—to Georgia, New Hampshire, Florida, and Rhode Island.

States have little incentive to fund projects that benefit people outside its borders, yet it is those partnerships which enrich our Nation. These are examples of why national leadership is important. So I hope that as we move forward we remind ourselves that there are many activities of the Endowment other than some of the areas of controversy that we have heard of.

Mr. President, I yield the floor.

Mr. GORTON. Mr. President, we are less than 30 minutes from moving on to another subject, the cloture vote on the bill relating to the Food and Drug Administration, and I may, I would like to summarize where we are on this interesting and multifaceted debate on the National Endowment for the Arts.

The Senator from Missouri, Mr. ASHCROFT, who is present on the floor, and Senator HELMS have proposed an amendment that will terminate the National Endowment for the Arts in much the same way as the House of Representatives has already voted.

I hope that we will be able to vote on that amendment in not too great a time after the completion of whatever the majority leader seeks to do with respect to the Food and Drug Administration bill. The Senator from Missouri may very well tell us how much more time he thinks he needs on his amendment.

After that, logically the next amendment would be that proposed by the Senator from Michigan [Mr. ABRAHAM], which would close down the National Endowment for the Arts but would transfer the money to, I believe, the National Park Service for the preservation of historic American treasures.

The next proposal would be that of the Senators from Alabama and Arkansas who would essentially block grant the entire appropriation for the National Endowment to the States; following that proposal by the Senator from Texas [Mrs. HUTCHISON], that would have 25 percent, roughly, gov erned by the National Endowment for the Arts here and 75 percent block granted for the States.

The proposals that have been discussed on the floor at some length yesterday afternoon and this morning. I hope that we can reach an orderly method for voting on each of those amendments so that the will of the Senate with respect to the National Endowment will be made known.

I regret deeply to say that my partner on this bill, Senator BYRD, is indisposed today and will not be able to be here at all, something he regrets. He hopes that maybe at least some of these votes could be postponed until tomorrow. I will have to leave that up to the majority leader, who I think wants to move forward as quickly as we possibly can.

It is appropriate now, however, I think, for me to state my own view at least on the four amendments that are in front of us. To those of the Appropriations Committee and, most particularly, my subcommittee, I believe the National Endowment for the Arts does in fact play a constructive role in culture in the United States. I believe that those born in the last 2 or 3 years have cut down tremendously on some of the truly objectionable grants which were rightly objected to by the vast majority of the American people.

So with respect to the first two amendments, I will vote no. I also am unable in my own mind to feel that we would somehow deal more sensitively if all of these grants were decentralized to State arts commissions.

Finally, I find myself somewhat in sympathy with the proposal of the Senator from Texas. I believe that perhaps a greater focusing, but not a universal focusing, on State and regional arts organizations may well be appropriate, but that there are also grants that are appropriately national in nature and that many of the institutional grantees, while they may be located in a particular city or a particular State, have an impact on the arts that goes far beyond the locale of their principal office, their museum, their symphony orchestra or their opera company.

Because, however, the Ashcroft-Helms position has governed the House of Representatives, my inclination is to vote against all of these amendments that change the present system simply because we will have to take into account the views of the House of Representatives in a conference committee, and as I think is likely at least to come out with a proposal that is perhaps closer to that of the Senator from Texas than any other that I have heard at this point.

So at the present time, unless I am persuaded to the contrary, Mr. President, I am going to suggest to the Members of this body that they leave the appropriation for the National Endowment for the Arts contained in the bill as it is before we have untouched and discuss the very important questions that all of them have raised with the House of Representatives that has taken a quite different view in a conference committee. With that, I yield the floor.

Mr. ASHCROFT addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

AMENDMENT NO. 1188

Mr. ASHCROFT. Mr. President, thank you very much.

I rise to address the issue of the National Endowment for the Arts and some of the arguments that have been raised in this debate.

I think it is important that we debate this issue thoroughly. I think it is important that we have the discussion of as many Members of this body on this issue as is possible for the American people.

I am not in any rush to judgment or to election on this. To say because the House of Representatives has taken a position that here the Senate should not take a position or that it should merely endorse the position of the Committee on Appropriations I think is to do less than the American people expect of us.

The American people understand that the issue before us is whether or not arts are to be funded by Government and whether that is a role for Government to play. We must look at the reason why we have Government, the reason we take money from the American people that they have earned and they cannot spend on their own families.

That is a major issue. And whether or not we are going to take it and then give some of it back to a State where we do not have the ability to control it, or whether we are going to give part of it to the State and then try to control the rest of it, is another major issue.

I think we ought to debate these things. So I, frankly, want the Senate to move forward and I wish to move forward with dispatch and make sure that we do not unduly delay things. But this is an issue worthy of the American people, it is worthy of our understanding. I think there are substantially basic, philosophic items that are of importance here: Does the Government have a responsibility to shape the culture by paying for artistic expression, and by paying for some artistic expression and not paying for other artistic expression? I think that is a very important question.

I say that it is important to understand that both artists and nonartists are on both sides of this issue. There are people who love the arts so much that they do not want the Government to contaminate the arts. They feel that when the Government gets in the position of starting to say that this art is good and is worthy of being subsidized and this other art over here is not good and is not worthy of being subsidized, then the work that is likely to do hurt the arts and to leave the arts in a situation of impurity, with artists who are seeking not to express themselves but to express what the bureaucrats in Washington or in a State capital would want them to express.

As a matter of fact, that is exactly the point that Jan Breslauer, the critic from the Los Angeles Times, has written about. Eloquently she states—and as a matter of fact, it is more than an eloquent statement. This is a rather embarrassing indictment of the National Endowment for the Arts. Let her words speak this position as I quote them. And she says—or he says. I do not know.
not know whether Jan, J-a-n, is a "he" or "she." I apologize if there would be any offense in what I have said.

The endowment has quietly pursued policies rooted in identity politics—a kind of separatism that emphasizes racial, sexual and cultural differences above all else. The arts world’s version of affirmative action.

She is describing the way the bureaucracy, known as the National Endowment for the Arts, has operated, that it has emphasized separatism, emphasis on racial, sexual, and cultural differences above all else. I think the Statue of Liberty has stood there without wincing for a long time. She stood through hurricanes and the tests of time, storms, good times and bad, in war and in peace, but I think she winces a little bit when she thinks about all the people that have come here to pursue common goals of freedom being driven by Government to be separate, to be forced apart.

I think of the millions of lives lost in the Civil War for unity, so that this would be one Nation united under God with liberty and justice for a few or for this group or that group, with preferences? No, for all.

The National Endowment for the Arts has operated, that it emphasizes separatism, emphasizes racial and cultural differences. These differences are being elevated, instead of minimized, in the way, she says, the funds are given out from the National Endowment for the Arts.

Fundamentally, I do not believe that Government should be striving to drive wedges between Americans. Whether it is an arts program or anything else, I think we need to get to an America that emphasizes our identity, the common things we enjoy, the freedom we embrace, the differences we have. I think the Statue of Liberty has stood there without wincing for a long time. She stood through hurricanes and the tests of time, storms, good times and bad, in war and in peace, but I think she winces a little bit when she thinks about all the people that have come here to pursue common goals of freedom being driven by Government to be separate, to be forced apart.

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we have to tell the people what good poetry is, and stuff like this is good enough for their support or something else is good enough for their support.

You would think we would learn that the central government is not the place to direct investment, whether it be in art or the things that divide us.

There are different cultures, there are different ways to do government. There are different ways to allocate resources. One way is to have central planning, to have the Government make all the decisions, encourage or alloc- ate the resources on its own. That is a way which was tried for a long time.

Communism was a system which said we will do central planning. We will not trust the marketplace. We will not trust the judgment that people will reach on their own. We will trust the central planners, the superior intellects of Government to make those decisions. We will ask them to decide how many potatoes are grown and how many are sold and how many TV’s are made, and with the superior wisdom of centralized government, we can tell the people how things are and it will all be better.

I love the joke Ronald Reagan used to tell about the guy going to buy a car.

The guy said, “You have to wait 10 years for your car but on the 12th day of February, 10 years from now, in the morning, we are going to deliver your car to you.”

The car salesman says, “Why not?” He says, “Well, the plumber is coming then.”

The whole point is planned allocation of resources by central government is a failure, an abject failure.

Yet we have people come to the floor of the Senate and say people really do not know the good art from the bad art, what to support, what not to support, and they need the Government to come look and be the Good Housekeeping Seal of Approval. We cannot trust the private marketplace, the will of the people, the understanding of the people to allocate the resources that they ought to put or want to put into art. We have to confiscate resources from them and then we have to use those resources as some sort of gold stock. I do not know what you must think of, Mr. Ashcroft, but if you ought to support this, this is great.

Well, if you put the Good Housekeeping Seal of Approval on material that emphasizes, above all else, racial, sexual, and cultural differences, in the words of Jan Brewer, the art critic, what have we is the Government telling us what is good and telling us that all these things that divide us are good and the things that unite us are not worthy of funding.

In my judgment, I think we should have learned something. We should have learned that when the Founders of this great country considered this question, they voted overwhelmingly not to have the Federal Government involved in subsidies for the arts. This is not new. This idea came into being in Lyndon Johnson’s plan for a Great Society. We know how the governmen- talism of the Great Society has been so eminently successful in other areas, in attempting to deal with poverty. We see there are more chil- dren on poverty now than there were when the so-called Great Society began. And in an attempt to deal with situations where there were children who were not being taken care of and not being raised by their par- ents—there were no families there, really—we have seen that problem ex-acerbated and intensified rather than assuaged or reduced. Here we have one of the Great Society programs and here is another one that says we know best from Government.

In the area of the Great Society, as it relates to the welfare program, we have that figured out that the central gov- ernment should not have a sort of a Good Housekeeping Seal of Approval. We have abandoned the old Federal ap- proach that says there is a way you are going to do this and this is the way, the truth, and I guess it would not be the light, would it? The Federal Gov- ernment’s welfare program, we found out, was a failed program.

I yield to the Chair, if there is an item that needs to be brought to my attention.

The PRESIDING OFFICER. Under a previous order, the hour of 12:15 having arrived, the Senate is to conduct a clo- sure vote.

Mr. ASHCROFT. I ask unanimous consent for 1 more minute in which to conclude my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ASHCROFT. I thank the Chair. It is clear to me that the National En- dowment for the Arts takes resources from taxpayers to spend in a way that is clearly not better than taxpayers. Even art critics indicate that that taking has not only a bad effect on people, it divides them, seeks to separate them, but it has a corrosive effect on the arts. I believe that having the Government establish values that it tries to impose on people is a denial of the genius of America, which is when the American people im- pose their values on Government, not when the Government imposes its val- ues on the people. The so-called Good Housekeeping Seal of Approval theory of support for the National Endowment for the Arts reveals the bankruptcy of the concept of Government telling people what they should believe and what they should value.

I thank the Chair.

The PRESIDING OFFICER. The Sen- ator from California.

Mrs. BOXER. Since the Senator from Missouri has taken all the time, I ask unanimous consent that I may have an additional 60 seconds before the vote to make some comments.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. BOXER. I thank Senators for their indulgence. I do not have the time to lay out all the reforms that we have made in the National Endowment for the Arts, nor to give you the details on how every single dollar that my col- league talked about is leveraged by $12 in every community across this great country of ours, because the arts, just as they are in the military, preserve our culture. We spend twice as much on military bands as we do on the Na- tional Endowment for the Arts. If the military bands make a mistake and play a song that we don’t think is ap- propriate, we don’t stop funding the military bands, because they are a very important part of our culture. If a postman acts wrong and is obnoxious, we don’t stop delivering the mail.

So I think it is very important that when we go back to this debate—and I think right now it won’t be for a couple of days—that we lay out all of the re- forms that have been made and all of the wonderful programs, such as the Youth Symphony, the ballet, and all the things we do with the arts, and have a fair debate.

I thank the Chair, and I yield the floor.

FOOD AND DRUG ADMINISTRATION MODERNIZATION AND ACCOUNT-ABILITY ACT OF 1997

The Senate continued with the con- sideration of the bill.

The PRESIDING OFFICER. Under the previous order, the clerk will re- port the motion to invoke cloture.

The assistant legislative clerk read as follows:

The undersigned Senators, in accord- ance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the sub- stitute amendment to Calendar No. 105, S. 830, the FDA reform bill: Trent Lott, James M. Jeffords, Pat Rob- erts, Kay Bailey Hutchison, Tim Hutchison, Conrad Burns, Chuck Hagel, Jon Kyi, Rod Grans, Pete Domenici, Ted Stevens, Christopher S. Bond, Strom Thurmond, Judd Gregg, Don Nickles, and Paul Coverdell.

The PRESIDING OFFICER. The question is, Is it the sense of the Sen- ate that debate on the modified com- mittee amendment to S. 830, the FDA Administration Modernization and Account- ability Act, shall be brought to a close?

The yeas and nays are required under the rule, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New York [Mr. D’AMATO] is necessarily absent.

Mr. FORD. I announce that the Senator from West Virginia [Mr. BYRD] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber de- siring to vote?
The result was announced—yeas 94, nays 4, as follows:

[Rollcall Vote No. 239 Leg.]

YEAS—94

Abraham Feinstein Lugar
Allard Ford Mack
Ashcroft Fritz McCain
Baucus Glenn McConnell
Bennett Gorton Mikita
Biden Graham Moiely-Braun
Bingaman Gramm Moynihan
Bond Grams Muzkowski
Booz Graham Murray
Breaux Greg Nickels
Brownback Hagel Nixon
Bryan Hatch Reid
Bumpers Hatch Roberts
Burns Helms Rockefeller
Campbell Hollings Roth
Chafee Hutchinson Santorum
Cleland Inhofe Sarbanes
Coats Inouye Sessions
Collins Jeffords Shelby
Conrad Johnson Smith (NH)
Coverdell Kempthorne Smith (OK)
Craig Kerry Snowe
Daschle Kerry Stevens
DeWine Kohl Stevens
Dodd Kyl Thomas
Domenici Landrieu Thompson
Dorgan Lautenberg Thurmond
Durbin Leahy Torricelli
Enzi Levin Wyden
Faircloth Lieberman Wyden
Fitzgerald Long Wyden

NAYS—4

Akaka Reed
Kennedy Weilstone

NOT VOTING—2

Byrd D’Amato

The PRESIDING OFFICER. On this vote, the yeas are 94, the nays are 4. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. WYDEN. Mr. President, I ask unanimous consent to proceed as if in morning business for 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF GENERAL SHELTON

Mr. WYDEN. Mr. President, I have asked for this time to notify my colleagues that I no longer intend to object to the U.S. Senate proceeding to the nomination of General Shelton to be Chairman of the Joint Chiefs of Staff.

Last Thursday morning, I announced publicly that I would object to the Senate proceeding to General Shelton’s nomination. My colleague from Oregon, Senator SMITH, supported me in this effort. We did so not out of any reservation of the general’s qualifications but because he is about to become the Nation’s top ranking military officer.

Mr. President, General Shelton is in a position to assure that the military—and in this case the Air Force—respond to rather than ignore the requests of the Congress and our constituents. It is not too much to ask that the Nation’s top general help us address the concerns of the widows of the American airmen who have died serving our country. What they have wanted is simply to have the Air Force explain the reasons for the crash of a C-130 off the coast of California last November that killed 10 airmen on board. In April of this year, I was informed the widows and families that the cause of the crash was engine failure due to fuel starvation. No further explanation was offered at that time. When the widows and families sought further explanation, they were told that the case was closed. Later that month, they came to me, and asked if we could help. I approached my colleague, Senator SMITH. And, at every step of the way, Senator SMITH has been exceptionally helpful in our joint efforts to work to make sure that the Air Force would provide the loved ones of these airmen an answer to what happened in this tragedy. The families, my colleagues, have a right to know.

We asked that an independent group be allowed to review the file. We asked that information about the crash be made available to the families. We asked that the Air Force give the National Transportation Safety Board’s aviation experts access to the file.

The denial of the request to provide the National Transportation Safety Board access to the files was especially difficult for Senator SMITH and I to understand, because in the interim we were not allowed to get a private contractor to look at these materials. On September 10, the National Transportation Safety Board informed us that, based on the limited data available, the Board was unable to determine whether the Air Force had conducted a thorough investigation.

Having exhausted all other avenues to get this critically needed information for Oregon families, it was my hope that we could command some attention for this matter by appealing to the soon-to-be most senior officer. General Shelton’s staff responded quickly. The Air Force has now proposed an agreement with the National Transportation Safety Board that should provide us the information we seek. It is a solid agreement and we wish to thank the Air Force for the prompt response to this case.

The agreement between the Air Force and the National Transportation Safety Board, which will be presented to the widows and the Oregon families, and provides for a joint, high-level review of the accident involving King-56 and other C-130 incidents. The agreement calls for the team to issue a preliminary report within 90 days. It is our hope the full participation of the National Transportation Safety Board in a manner that assures its independence of action will finally get the families and the widows the answers they have awaited for so long.

I want to thank my colleague, Senator SMITH. Before I do, I thank the chairman of the Armed Services Committee, Senator THURMOND, and Senator MccAIN, his colleague, and Senator LEVIN, for assisting Senator SMITH and me. In yielding to my colleague, I again express my appreciation and thanks for the opportunity to work together on this matter in a bipartisan way.

Mr. President, I yield the remainder of my time to my colleague from Oregon, Senator SMITH.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH of Oregon. Mr. President, I thank my colleague, Senator WYDEN, for yielding. I publicly commend my senior colleague from Oregon, with whom it has been my great pleasure to stand on this issue and ask for justice for our State. I want to point out a very pivotal role that Senator SCOTT THURMOND played in breaking a logjam, if you will, for the State of Oregon. For a very long time now, Senator WYDEN and I have been trying to get answers from the Air Force for widows and orphans as to why their loved ones, these airmen, perished in this tragic accident. For one reason or another, we were stalled and put off at every turn.

It was Senator THURMOND who, when he heard of Senator WYDEN’s hold on this nomination—and, frankly, my encouragement of that—that he intervened in our behalf. I acknowledge it. I thank him. He asked me to go immediately with him to the cloakroom and work with him to remove Senator WYDEN’s hold. It was he who, in a very long conversation, asked that the Air Force give the National Transportation Safety Board’s aviation experts access to the file.

We laid out the terms of a deal that will include a new investigation into C-130 air transports generally, and this one in particular. It was promised to Oregon’s families, that these widows and orphans would be given the information they need as to why this accident occurred. It was promised that a member of the National Transportation Safety Board would be a part of this investigative team. And I think that is important for the Air Force that has, in my State, lost some credibility. I thank the Air Force for their promise to provide to our State, and this issue generally, the kind of investigation that was conducted for Commerce Secretary Ron Brown, who perished in an accident in Bosnia.

So, I thank the Air Force for responding. I regret it took this level of intervention, but I compliment my colleague for his leadership on this. I have been proud to stand with him. I am grateful to Senator THURMOND. I am thankful the Air Force has come around to help us on this issue. I only hope that out of all of this will come information that will protect our men in the Air Force who fly C-130 air transports from this ever occurring again to anyone else.

With that, I encourage my colleagues in the Senate to vote for the confirmation of the Chairman of the Joint Chiefs of Staff and I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from South Carolina.
Mr. THURMOND. Mr. President, it was a pleasure to work with the Senator from Oregon to resolve this matter. I am very pleased it has been resolved.

EXECUTIVE SESSION

Mr. THURMOND. I now ask unanimous consent that the Senate immediately proceed to executive session to consider the following nomination, reported from the Armed Services Committee, Calendar No. 244, Gen. Henry H. Shelton.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF GEN. HENRY H. SHELTON FOR APPOINTMENT AS CHAIRMAN OF THE JOINT CHIEFS OF STAFF

The PRESIDING OFFICER. The clerk will report.

The bill clerk reads the nomination of Gen. Henry H. Shelton to be Chairman of the Joint Chiefs of Staff.

Mr. THURMOND. Mr. President, I further ask unanimous consent that the nomination be confirmed, the motion to consider be laid on the table, any statements relating to the nomination appear at this point in the RECORD, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered. The nomination is confirmed.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I ask unanimous consent I may speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

WILEY K. CARTER

Mr. COCHRAN. Mr. President, the U.S. Senate lost one of its most colorful and well liked staff members last Thursday night when my administrative assistant, Wiley Carter, died. His sudden and unexpected death at 61 years of age following surgery at a hospital in Jackson, MS, has deeply saddened us all. He began his work with me as manager of my campaign for re-election to the U.S. House of Representatives in 1974. In that turbulent election year, with his good assistance we received over 70 percent of the vote. After the election, Wiley joined my congressional staff in Mississippi where he served as my liaison to local governments and case worker. Two years later he became a member of my Washington staff and soon thereafter became my administrative assistant.

During these 23 years of close association, I developed a deep appreciation for Wiley Carter. His warm good nature was constant, his loyalty never failing, and his enthusiasm an ever present inspiration. He was adept at handling constituents' problems, and he reminded all of us by his example that one of our highest priorities was to help solve the problems of the people of our State and to treat everyone who called on us with respect and courtesy. He really loved his job. He loved people. He loved politics. He loved campaigns. He loved Mississippi State University. But, most of all he loved his family. He cared about his children and his efforts to support and assist them in every possible way were well known.

One experience with Wiley and his wife Gwen, and their children, and their extended family is particularly memorable for me. We were all in Starkville, MS celebrating the donation of his political memorabilia and papers to the Mississippi State University Library. The love the family members felt for each other was obvious to me, and the pride they had in seeing Wiley's career celebrated with such ceremony—well attended by many friends was a testament to their deep appreciation of him. And, he loved every minute of it as he should have.

One of his former classmates said to me, "Where did Wiley get any papers?" When he was in school at State, he didn't have any papers."

Of course, there were a lot of clippings, photographs, and letters that had accumulated over a career dating from his organization of the Mississippi Young Democrats in the 1950's and the Carroll Gartin and John Bell Williams campaigns for Governor, to the present.

The skills he developed along the way led our mutual friend, Bill Simpson, to say to me recently, "Wiley Carter in my book is the best street politician in Mississippi."

I didn't know whether that was such a high compliment until I told Wiley what Bill had said about him, and Wiley said, "You know, that's one of the best compliments I've ever gotten."

In this day of cynicism about politics and government, more Wiley Carters would be good to have. People who devote their energy to doing their best to make our government respond to the needs of ordinary people and respect the opinion of citizens. Wiley engendered good will wherever he went. He warmed our hearts, and he put a smile on our faces.

Without Wiley, life will not be as interesting, and political campaigns won't be the same either. He would say, for example, "In a campaign, if you haven't heard a rumor by noon, you ought to start one." Wiley organized a War Room before Lee Atwater and James Carville made the term famous. He was so well-liked by so many in Mississippi and here in Washington too. A Capitol Hill policeman, Andy Anders, was one of the first Washistes in whom I called on Friday morning. Andy had taken his vacation a few years ago to come visit Mississippi at Wiley's suggestion, and Wiley gave him the royal treatment. They walked up to the State Capitol. The legislature was in session. He introduced him to Gov. Kirk Fordice, the Speaker of the House, and many others. Of course Andy was impressed and delighted.

That says a lot about Wiley and his capacity and his sense of duty to reciprocate true acts of friendship and kindness.

There will never be another one like him. We all are so fortunate that we have had the benefit of his unique insights into human nature and his example of loyalty to his friends and family.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Mr. President, I join my colleague in expressing our sadness at the loss of our friend and Thad's administrative assistant, Wiley Carter. I extend my sympathy to Senator Cochran and his staff, and certainly to the family and all the many friends that Wiley Carter had in Mississippi.

Senator Cochran did a wonderful job of talking about his indomitable spirit. He was a lovable guy, a great pleasure to be around. He was a friend of mine. And on many occasions when I needed advice and counsel, I can remember what Wiley said always have good spirits. I have never seen anybody who actually enjoyed government and politics, which is the art of Government, any more than Wiley Carter. He was dedicated to maintaining an America in which we want our children to grow up. I am not the only person to note that many Wileys would serve us all well.

In the initial part of his 40-year career, Wiley worked for the State's economic development department, the Mississippi Democratic Party, former Lt. Gov. Carroll Gartin and former U.S. Representative John Bell Williams of Mississippi. But it was during his 23-year stint as Senator Cochran's administrative assistant that people throughout Mississippi knew him best.

Wiley spent much of that time criss-crossing our State, listening to its citizens, and working on Thad's behalf to carry out their mission. People trusted Wiley. They were comfortable sharing their concerns with him, and they knew that their words would go straight to Thad's ear.

Thad and I were not the only ones who counted on Wiley's knowledge. Very few people knew more about Mississippi politics than Wiley, and in past years, few young political hopefuls in our State have considered a run for office without first consulting him. He also provided advice and perspective for many who had the honor for quite a while, and he did it with his infectious smile and sense of humor.

His wit always seemed to put political life in perspective. While running Senator Cochran's Senate race, Wiley
quipped, "In a campaign, if you haven't heard a good rumor by noon, you better start one." Needless to say, Wiley knew how to have fun in serious situations, and he always got the job done.

Wiley's outstanding work and invaluable knowledge were not the only reasons he was well loved by Mississippians. Many benefited from his tireless work as an ambassador for his beloved Mississippi State University. Wiley was a servant of the people, and he was one of them.

He is best described as the kind of person who never met a stranger or knew an enemy. He reached out to individuals at all levels, and his friendliness was contagious. Quite simply, everyone liked Wiley.

I understand that the church in Jackson couldn't hold all those who showed up yesterday to pay tribute and show appreciation for Wiley. To anyone whose life he touched, this is no surprise.

There is not a story that can be told or a memory brought to mind about Wiley that wouldn't bring a smile to the faces of those who knew him, which is a tribute in itself to his character. Wiley will be sorely missed, but more importantly, he will be fondly remembered.

I am sure all my colleagues in the Senate join me in extending condolences to the members of his family, to his friend Senator COCHRAN, and to the many others who loved him.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I know we all join in expressing those feelings about Wiley. They were so adequately and eloquently expressed. We appreciate that.

UNANIMOUS-CONSENT AGREEMENT

Mr. JEFFORDS. Mr. President, I ask unanimous consent that when the Senate reconvenes at 2:15 there be an hour for debate only on the FDA bill to be equally divided between Senators JEFFORDS and KENNEDY, and immediately following that hour the Senate will resume the Interior appropriations bill.

The PRESIDING OFFICER. Is there objection?

Mr. ASHCROFT. Reserving the right to object, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

The PRESIDING OFFICER (Mr. ASHCROFT). The Chair, in his capacity as a Senator from the State of Missouri, asks unanimous consent that the order for the quorum call be rescinded. Without objection, it is so ordered.

For the wending request for unanimous consent no objection being heard, without objection, it is so ordered.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 1:25 p.m., recessed until 2:14; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. COATS).

FOOD AND DRUG ADMINISTRATION MODERNIZATION AND ACCOUNTABILITY ACT OF 1997

The Senate continued with consideration of the bill.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. JEFFORDS. I yield 10 minutes to the Senator from Connecticut.

Mr. DODD. Mr. President, I thank the Chair and I thank my colleague from Vermont, the chairman of the committee.

Let me begin these brief remarks by commending all of our colleagues on the Labor and Human Resources Committee. This has been a long process, 2% to 3 years. The Presiding Officer is a member of this committee as well and I'd like to, I think, to bring a bill which I think most would agree is a very good bill.

There obviously still are some issues that will have to be resolved, but this has been a very fine product that has been assembled by both Democrats and Republicans for the first time in several decades of reforming the Food and Drug Administration and the processes by which we bring important pharmaceutical products and medical devices to patient groups and individuals across this country in an efficient, safe, and expeditious fashion.

Let me begin as well by thanking our colleagues for their overwhelming support earlier today of the cloture motion to proceed with this bill. Mr. President, 94 Senators, of both parties, loudly and clearly told us they are ready to move forward to reauthorize PDUFA and begin debating the other critical reforms this bill contains.

There is no Federal agency with a more direct or significant impact on the lives of the American people than the Food and Drug Administration. The foods that we serve our family, the medicines we take when we are sick, the drugs we give our pets are all approved and monitored by the Food and Drug Administration. We must not lose the opportunity that we have before the Senate today to enact legislation that ensures that the FDA has the authority it needs to bring safe and effective products to the American people quickly, efficiently and safely.

I again thank both Senator JEFFORDS and Senator KENNEDY for their perseverance on this issue. Time after time they have been willing to return to the bargaining table after many others would have walked away. With open minds and good faith they have extensively negotiated this bill line by line.

Mr. President, we have now come to a point where issues on which Members were previously completely polarized—third-party review of medical devices, off-label dissemination of information, health claims for food products, the number of clinical trials needed for drug approval, and national uniformity of cosmetics—we have now reached agreement.

I don't know that any of us would have thought unanimity possible on these provisions even a month or two ago, but here we are, this afternoon on this day, with full agreement on all but a handful of issues, or less.

I know we have a better bill for all the arduous negotiations that have occurred. As an example of how far we have come, let me just briefly describe third-party review of medical devices. The bill would expand the pilot program currently administered by the FDA. This is a program, I should note, that is supported by the FDA as a way to make more efficient use of its resources.

In last year's debate on this issue, which many may recall as being one of the more acrimonious, we were told that this provision was a nonstarter, no room for compromise, subject closed.

This year, I am pleased to say a spirit of bipartisanship and compromise has prevailed. Senator HARKIN, Senator KENNEDY, and Senator COATS, the Presiding Officer, diligently worked to draft language that ensures that higher risk devices are not inappropriately included in this pilot program and that strong conflict of interest protections are in place.

Late last week, again on an issue that appeared unresolved, national uniformity for cosmetics, we have reached agreement. Senator GREGG of New Hampshire has offered what I think is a very reasonable compromise. In the absence of objection, States can continue to regulate where the FDA has not acted. Conflicting State requirements that could confuse consumers will be removed. But where the FDA has not chosen to act, where it does not have either the manpower nor the authority to protect the public, States can still play their historic role in regulating cosmetics.

This is the kind of effort, Mr. President, that I have made over and over again on this bill. Thirty times earlier this year, since the mark up 2 months ago, we have made improvements in this legislation. A great many of us take pride in the product that we have created—a bill that would speed lifesaving drugs and devices to patients and that clearly retains the FDA as the undisputed arbiter of the safety and effectiveness of the products.

I will speak about some of the positive reforms contained in this bill, as well.

At the heart of this bill is the 5-year reauthorization of PDUFA, the Prescription Drug User Fee Act, a piece of legislation remarkable for the fact...
that there is unanimous agreement that it really works. PDUFA has set up a system of user fees which drug companies pay to the FDA. These fees have enabled the agency to hire more staff. As a result, drug approval times have been cut almost in half, getting new and innovative therapies to patients more quickly.

In addition, by improving the certainty and clarity of the product review process, S. 830 encourages U.S. companies to continue to develop and manufacture new products in the United States, not an insignificant matter. The legislation emphasizes collaboration early on between the FDA and industry during the product development and product approval phases. This will prevent misunderstandings about agency expectations and we think should result in quicker development of approval times.

Mr. President, in addition, S. 830 establishes or expands upon several mechanisms to provide patients and other consumers with greater access to information and lifesaving products. For example, the legislation will give individuals with life-threatening illnesses greater access to information about the location of ongoing clinical trials of drugs.

Based on a bill originally championed by Senators Snowe of Maine and Dianne Feinstein of California, I offered an amendment in committee, which was pleased to see adopted, to expand the existing AIDS database to include trials for all serious or life-threatening diseases.

Experimental trials offer hope for patients who have not benefited from treatments currently on the market. Currently, patients' ability to access experimental treatments is dependent on their spending large amounts of time and energy contacting individual drug manufacturers just to discover the existence of trials.

Mr. President, this is not a burden that we should place on individuals already struggling with chronic and debilitating diseases. This database will provide one-stop shopping for patients seeking information on the location and the eligibility criteria for studies of promising treatments.

Mr. President, I am particularly pleased that this legislation incorporates the Better Pharmaceuticals for Children Act, legislation originally introduced by our colleague from Kansas, Senator Kassebaum, and now cosponsored by myself and Senator DeWine of Ohio, along with Senator Kennedy, Senator Mikulski, Senator Hutchinson, Senator Collins, and Senator Chiles.

This provision, Mr. President, addresses the problem of the lack of information about how drugs work on children, a problem that just last month President Clinton recognized publicly as a national crisis.

According to the American Academy of Pediatrics, only one-fifth of all drugs on the market have been tested for their safety and effectiveness on children. This legislation provides a fair and reasonable market incentive for drug companies to make the extra effort needed to test their products for use by children.

It gives the Secretary of Health and Human Services the authority to request pediatric clinical trials for new drug applications and for drugs currently on the market. If the manufacturer successfully conducts the additional research, 6 extra months of market exclusivity for cancer treatments approved.

I recognize that there are a few matters unresolved in this bill despite the best efforts of all involved, and we will need to hold votes on those issues. One issue, which I plan to discuss further when we debate the bill this week, involves section 404 of the bill, which relates to the FDA's medical devices. This provision, the so-called labeling claims provision, clarifies current law by stating that while reviewing a device, the FDA should look at safety and efficacy issues raised by the use for which the product was developed and for which it was marketed.

Again, this is current law. Unfortunately, in a few instances the FDA has not appropriately applied its review by requiring manufacturers to submit data on potential uses of the product. Some have raised concerns that under this provision a manufacturer could propose a very narrowly worded label for a device and that the FDA would be barred from asking for information on other obvious uses.

I don't believe this is the case. The FDA retains its current authority to not approve a device if features of the device raise new questions of safety and efficacy. Clearly, if a bad actor device manufacturer attempted to get a misleading label past the FDA, the agency would have full authority to disapprove the product.

Again, this is another matter, that some common ground be sought to see if we cannot resolve this, but I do believe the present legislation is more than adequate to protect the concerns that have been raised about a use for a device beyond what its intended purpose would be.

I was pleased to join Senator Jeffords, the chairman of the committee, as the first Democratic cosponsor of this bill. I thank him again for the work he and his staff, as well as Senator Kennedy, Senator Mikulski, Senator Wellstone, Senator Coats, Senator Gregg and others, have contributed.

Mr. President, this has been a long process, and while there are still some outstanding issues, I think this committee deserves a great deal of credit for having been open to the suggestions of others. There are about 50-some-odd amendments that are kicking around that may be offered. I don't know how many amendments will pass and through the maneness test when they are raised, but I hope, for those who are bringing up new matters here that we have not had a chance to look at, that they would reserve those unless there is an overwhelming need for them. In many cases, if the matters had been brought before the committee earlier, we might have been able to handle them.

Mr. President, in a few days I will vote for the bill. PDUFA goes out of existence on September 30. We have been 2 1/2 years at this now. My hope is we will not delay this to such a degree that we lose a historic opportunity to make a difference. When it takes 14 to 17 years to oversee cancer treatments approved, there is something fundamentally wrong with that kind of a process. We ought to be able to make it far more efficient than that and also be able to provide people with the safety that they demand. It is a wonderfully encouraging thing in this country, when we think how many places we go and how many products we ingest and how many products we apply to our bodies and to our children and families, that we are able to look people in the eye when we do that, is safe and, by and large, efficient and effective. We don't want to lose that.

We also believe in this day and age with all the technology available to us, that we ought to be able to give up on safety or efficacy and be able to move that process forward.

I thank my colleague from Vermont for yielding.

Mr. Kennedy. Mr. President, I yield 7 minutes to the Senator from Illinois.

Mr. Durbin. Mr. Kennedy. I yield to the Senator from Massachusetts for yielding.

We can all remember 2 years ago when there was a debate on Capitol Hill about closing down the Federal Government. Rush Limbaugh and people like him went on the radio and said, “Go ahead and do it, no one will notice. No one will notice if you close down these Federal agencies. They are just a drain on the Treasury and our tax dollars.”

But the agency that we are talking about today is an agency you would notice immediately—immediately—because the Food and Drug Administration, as small as it is by Federal standards, is one of the most important. There is not a single thing you buy in the drugstore or look at in your medicine chest at home that the Food and Drug Administration has not taken a look at to make sure it is safe for you, your family, and your children.

That is why this FDA reform bill is so critically important to this Nation to make sure we make this agency more efficient. I want to salute the Senator from Vermont and the Senator from Massachusetts. They have had their differences on issues, but I think most Senators, Democrats and Republicans, agree reform is needed. This bill is a step in the right direction.

It is in that spirit that I will offer several amendments. Let me tell you what I think people should take notice of. If you went out today and decided to buy a car for your family—a few years ago I went out and...
bought a Ford—you will have your name and address entered into a computer. If at some later date something is found wrong with that car, the brakes are faulty or there is some mechanism on the door that is not safe, they might tell you to pull the trim off down and they will send you a notice. A lot of Americans have received them. “Come on in to our shop, and we will fix your car.” That is reasonable. None of us want to drive an unsafe vehicle.

My amendment says is it not now reasonable, when it comes to heart valves and pacemakers and items like that, that we do the same thing? If you or your loved one is told by the doctor you need a pacemaker, you think long and hard about it but say, “Doctor, if you think that is what I need to live, so be it.” You go through the surgery, and everything works out just fine. Wouldn’t you like to be on a list somewhere so that if a defect is found in that device in the future, and 6 months, a year, or 2 years later, that you can be notified? That is what my amendment says. Track and surveillance, find the customers that use the products. If there is a change, let the customers know, let them know, so they can go back to their doctor, back to the hospital. I don’t think that is unreasonable.

The second thing is we want to move some of the drug surveillance, for example, and drug reviews off the Food and Drug Administration campus and take it to third-party reviewers. Now, this is being done in Europe and other places. It is not unreasonable that we would go to a laboratory and say, “You do the testing, you read the results; you tell us whether this drug is ready for the market.” I think that is a reasonable thing for us to try to do, under supervised circumstances. But my amendment says let us make certain, absolutely certain, that the third-party reviewer does not have an economic interest in the drug company seeking approval. Would you trust a reviewer who just happened to have a thousand shares of stock of the company making the product that he is deciding whether it will go to market or not? Would you have second thoughts if that person was being offered a job by the same company whose drug he is reviewing just happened to get a vacation in the Caribbean last summer at the company making the product and the drug company? I think that is reasonable. Where is the marketplace? It is here by my friend and colleague, the Senator from Massachusetts for yielding.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, how much time do I have?

Mr. KENNEDY. I yield myself 20 minutes, Mr. President.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 20 minutes.

Mr. KENNEDY. Mr. President, I thank my colleague and friend from Illinois for reminding us how important this debate is here on the floor of the U.S. Senate. We are talking about the agency of Government that has the prime responsibility for protecting the health and safety of the consumer. We all have an interest in making sure that medical products are available earlier. Every one of our families has benefited from the innovation and resourcefulness of the medical device industry and from the advances of pharmaceuticals. I doubt there is any Member of the body that has not. So all of us want to be able to make sure that medical advances will be available to the American public.

We are in a position today where the United States through the FDA is leading the world, in terms of approving new drugs as well as medical devices. That has changed from recent years. I think all of us have seen some very dramatic and important progress made in recent years. As I have said many times before, I want to give a tribute to the chairman of our committee who has worked tirelessly on this issue. He has brought together those individuals on our committee and outside that have been struggling to try and advance the interest of the public health. I think he has made remarkable progress in moving us forward to where we are today. But there are important remaining items that I hope we can dispose of in the Senate within a reasonable time period so that the process could move forward. I take exception from the understanding of the language that has been included in this bill with regard to ensuring that the consumers of medical devices and the patients of medical devices have the kind of protection that has been referred to here by my friend and colleague, the Senator from Connecticut, and others.

I have here, Mr. President, a letter from the Secretary of Health and Human Services, which indicates that they have four major concerns with this particular legislation. One of them was the area of cosmetics. Another area is environmental considerations, the third area is on FDA’s device manufacturing procedures. But the other important area is the one that I am going to address here today, and that is what I call the safety issue, the device issue as it applies to medical devices.

The Secretary, from the President of the United States, has identified this as being a major issue. So when others gather around and say, “Look, we have debated this and discussed it, why are we bringing these matters up in this debate at this time?” The reason that we are bringing it up is, as the Secretary of Health and Human Services has recognized, there are very powerful health consequences we ought to take note of and deal with as we ought to make this change. It isn’t only the Secretary of HEW. Here is the National Women’s Health Network, who points out:

The network is extremely concerned with this section of the bill, which is requiring medical device companies to perform complete reviews on the safety and effectiveness of a medical device. This must be amended to give FDA the authority to verify that the label is not false or misleading. Section 404 is a serious danger to women’s health, which must be fixed before S. 830 is adopted by the Senate.

Then the Patients’ Coalition indicates a similar concern. It outlines probably eight or nine major issues and section 404 is one of them.

The Consumer Federation of America wrote:

We are writing in support of your amendment to change section 404 to prevent serious injuries to patients and consumers from medical devices with false or misleading labels.

This isn’t just the Senator from Massachusetts that is saying this. Here is the Secretary of HEW saying it. Here are the primary groups defending women’s health and consumers’ health, all who have joined in saying there are dangers that this particular provision provides, and why it is so important that we are going to change it and alter it.

The Consumer Federation says:

Section 404 has been crafted to permit medical device manufacturers of class II devices to limit FDA’s review of the safety and effectiveness of a device based upon conditions of use listed on the label. Even if it were clear from the device’s technical characteristics that its real use would be for risky purposes, FDA would be prevented from looking beyond the conditions of use on the label. There it is. That is what the issue is. The Consumer Federation understands it. They are pointing out that 404 was crafted to permit the device manufacturers of class 2 devices to limit FDA’s review of the safety and effectiveness of the device, speaking for conditions of use listed on the label. Even if it were clear from the device’s technical characteristics that its real use would be for...
We are talking about a limited number of medical device companies that go to FDA and abuse this process because they are able to get through the process with a label that in so many respects matches a previously approved one, but the medical device has an entirely different technology that clearly indicates a different intended use. That is what we are talking about.

For example, the new lasers that are being sold as a labeled or general lasers that are for cutting various tissue, but clearly designed to treat prostate cancer. We want the FDA to be able to say, if you are going to use that for prostate cancer, we want to make sure that it is safe and efficacious. We don't want to permit the medical device industry to submit false and misleading statements.

That is a powerful statement. But I daresay if they are going to submit a statement that says they are going to use a particular device for one purpose and FDA can demonstrate that the company has intended the device for another purpose, and they are already involved in, advertising and promoting that particular medical device in countries outside the U.S. for an entirely different purpose, I say that is false and misleading. The Members of the U.S. Senate are going to have a chance to decide whether or not they are going to stand and say we will not permit the medical device industry to submit false and misleading information on labeling. We will see how that vote will go.

We include false and misleading under what they call the FDA's, which means the various medical devices that have to go through a more elaborate procedure. We have protections against false and misleading advertising on that. But we are going to say that the American public shouldn't be assured that a medical device industry which has not been adequately tested for the off-label use, which is the clear intention of the medical device company. And the answer is, no, they cannot. This isn't off-label use of two products that are being put together and the medical device by various medical professions. This is the guardian of the American public, the FDA, that is being denied the ability to look beyond the label at the technological differences of a device in terms of safety and efficacy.

Now, there are those that say—and we heard the argument by my friend from Connecticut—that FDA inherently retains that power. If they do, let's do it. If we spell it out, we haven't got a problem. But the Secretary of HEW does not believe they have the inherent power. The Consumer Federation doesn't believe they have the inherent power. The various patient groups don't believe they have the inherent power. The various groups that are out there protecting the public, virtually none of them believe they have the inherent power. If they have it, let's spell it out. We can work that language out. We have been attempting to do that for a considerable period of time, but we have not been able to do so.

The answer on the other side is, well, we can't anticipate every possible use that a medical device might have, and we are not going to submit safety data for every possible use and that FDA shouldn't get in the minds of various doctors using that medical device, for whatever purpose. That is not the argument. That is that we will hear out here on the floor of the Senate. That isn't what we are talking about.
That, Mr. President, is the issue.

"Let us see where the safety is." Where
tend to use it for prostate cancer. All
going to use it for cutting tissue, we
label is false and misleading—even if
any device following the 510(k) route
ing safety and effectiveness data on
the bill prohibits the FDA from requir-
through the 510(k) process. In fact, well
for cutting tissue. Under the bill lan-
the bone. Under the bill language, FDA
could not ask for safety and efficacy
data for the needle's use for tumor
removal, even though that is
clearly indicated by the designer of
the device. The company comes in, and
says, "Look, we have a biopsy needle
right here. Sure, ours is a little larger.
But this biopsy needle is really abso-
right here. Sure, ours is a little larger.
But this biopsy needle is really abso-
solutely intended to do the same thing as
the others out there and, therefore, we
are substantially equivalent," even
though they are out there advertising
that this needle can be used for remov-
ing a tumor. It doesn't have to pro-
vide any safety information about how
safe or effective that device is for the
removal procedure.

There is also the "laser for cutting"
issue. The labeled use is for general
attitudes. It has been adapted
specifically and clearly to cut prostate
tissue. Under the bill language, FDA
could not ask for safety and efficacy
data for cutting prostate tissue.

Digital mammography is currently
approved and labeled for diagnostic x
rays—which are used to confirm the
suspicion of a breast tumor. If digital
mammography is clearly going to be
used for screening, based on the design
of the instrument, which requires a
higher degree of accuracy, FDA should
be able to look at the effectiveness of
that technology for that use. Without
this assurance, too many women may
undergo biopsies or be misdiagnosed.

I think all Americans have been
informed by the FDA to the extent
that they were informed at all about
this issue. The question is whether
we are going to provide further protec-
tion for the American people. They are
obligated to demonstrate substantial
equivalence to the FDA by
demonstrating substantially equivalent
characteristics must not raise
new types of safety and effectiveness
questions in order for the product to
still be substantially equivalent to the
older product.

So, if the product is substantially
equivalent and doesn't raise new safety
effectiveness questions, it moves on
through. The logic of the process for
bringing medical devices onto the mar-
ket is that if the product is very
much like an existing product, it can
get to market quickly, but if it raises
new safety or effectiveness questions,
those questions should be answered be-
fore it gets on the market.

This process for getting new medical
devices on the market, commonly
known as the 510(k) process, is consid-
ered by most to be the easier route to
the market. That process accounts for
how 95 percent of all devices get to the
market. Devices that are not substan-
tially equivalent class I or class II de-
VICES already on market must go
through a full premarket review. Thus,
device manufacturers have an incen-
tive to get new products on the market
through the 510(k) process. In fact, well
over 90 percent of the new devices get
on the market through the submission
of a 510(k) application. Section 404 of
the bill prohibits the FDA from requir-
ing safety and effectiveness data on
any device following the 510(k) route
except for the uses the manufacturer
chooses to put on the label, even if the
label is false and misleading—even if
the manufacturer says, "We are just
going to use it for cutting tissue, we
are not going to use it for prostate can-
cer," knowing full well that they in-
tend to use it for prostate cancer. All
the world knows that they are going to
use that device for prostate cancer.
The FDA is prohibited from saying,
"Let us see where the safety is." Where
is the safety information on that?
That, Mr. President, is the issue.

Let me give you a few more exam-
ple.

On the biopsy needle for breast tu-
mors, the needle is labeled for per-
forming a biopsy. But the design clear-
ly indicates that it is designed to re-
tumors. Here you have a case
where you have a small needle with a
very narrow opening at the one end
which is used for testing a biopsy of a
particular tumor. Now the manufac-
turer comes in with a much broader
needle, a much wider needle, and says,
"Look, our needle is for the same
thing as yours." The design clearly indicates that it is built
to remove tumors. Under the bill lan-
guage, FDA could not ask for safety
and efficacy data for the needle's use
for tumor removal, even though that is
clearly indicated by the designer of
the device. The company comes in, and
says, "Look, we have a biopsy needle
designed for prostate tissue. Under the
bill language, FDA could not ask for
safety and efficacy data for cutting prostate
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approved and labeled for diagnostic x
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suspicion of a breast tumor. If digital
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used for screening, based on the design
of the instrument, which requires a
higher degree of accuracy, FDA should
be able to look at the effectiveness of
that technology for that use. Without
this assurance, too many women may
undergo biopsies or be misdiagnosed.

But this biopsy needle is really abso-
olutely intended to do the same thing as
the others out there and, therefore, we
are substantially equivalent," even
though they are out there advertising
that this needle can be used for remov-
ing a tumor. It doesn't have to pro-
vide any safety information about how
safe or effective that device is for the
removal procedure.

There is also the "laser for cutting"
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manage the injury. But I don’t think anybody has done a study to figure out whether Ibuprofen and the other drug I am taking is going to create some problem for me. I hope they don’t spend all of that time researching that question because we would never get anything approved. That is exactly the case with the devices, we must not allow the FDA to endlessly question device manufacturers about how physicians might or might not use their product in the future, especially if the manufacturer does not seek permission to market or promote for that use.

Again, we had an agreement going into this week that we would argue this device thing out, and then we would vote on it. Now that is off because of fen-phen situation.

But let us remember that we just had a vote. It was 94 to 4 that we ought to go forward. Why? Last week we were delaying consideration over 6 pages of a 152-page bill, we are now talking about 2 pages of a 152-page bill. I agree that section 404 is an important issue. We need section 404 to correct problems at FDA.

Also, I am concerned that my good friend from Massachusetts is getting into an emotional argument about the security of people in this Nation, and that somehow we are threatening their security by this particular provision—I have been chastised in my own State, and perhaps the country, saying I am threatening the lives of all Americans with this bill. That is life in politics. You have to take that.

Let me talk about the issue that we have with respect to the devices.

While the past has been marked by advances for both patients and the economy, the present is increasingly troublesome, and the future is by no means assured. For both premarket-approved products and the 510(k) product—by identical products—the FDA’s review requirements have become more burdensome and are taking more time. This has resulted in the delay of approving new devices. That is the issue here. Should we have to wait years to get something which will help us, help our health, help save our life, because FDA wants to explore hypothetical usages of the product by physicians, acting on their own initiative?

This has resulted in the delay of approving new devices. Furthermore, the current regulatory system is not keeping pace with medical innovation. U.S. patients face delayed access to the newer, more advanced generations of devices. In some cases, Americans are going abroad to take advantage of these technologies. U.S. device firms are themselves moving production and research facilities to other countries.

A study conducted by Medical Technology Consultants, MTCE Ltd., found that patients in the United States wait up to three times as long as their European counterparts for Government approval of new medical devices. The study also found that higher risk, breakthrough medical devices were approved in Europe within 80 to 120 days, provided the manufacturer has passed an EU facility inspection, which is completed within 120 days. Similar devices take an average of 773 days to be approved in the United States. New and lower risk devices entered the European market with no delay once a manufacturer has passed the initial facility inspection. Similar devices take an average of 178 days to be approved in the United States.

The FDA already takes four times as long to approve breakthrough medical devices as is allowed by U.S. statute—it has to do them faster—according to the Health Industry Manufacturers Association, HIMA. The approval times for these devices have nearly doubled since 1990. The FDA’s record on approving incremental improvements to existing devices is similar, with approval times also nearly doubling since 1990. Manufacturers now have less time to research and develop devices in the United States—they will all be overseas—if they face such egregious delays.

Patients presently have to wait for devices stuck in the FDA’s pipeline, and manufacturers have little incentive to bring new devices into that pipeline in the first place.

According to another study conducted by the Wilkerson Group, a New York-based independent consulting firm, FDA delays in approving devices will lead to the loss of U.S. jobs to nations where approval processes are more streamlined—an estimated 50,000 jobs over the next 5 years. Governments in Ireland, the Netherlands and elsewhere have already begun to highlight the impediment of FDA regulatory delay in their marketing materials to attract United States businesses overseas. Such actions will erode our Nation’s medical research infrastructure over time.

So we are not going to be getting them all from Europe. That is not going to help us obtain better health care for our citizens.

I would say one of the problems we have had, and the reason we have PDUFAs and everything else, is to try to help the FDA be more efficient and effective in getting through their duties. It is important that we become more effective and efficient in reviewing—folks here in this country have a wonderful record, but it can be a better record.

Certainly another thing I would like to point out—why are the patients’ representatives in favor of amendments that we have opposing them at times? Because consumers, obviously, are looking at it from a different perspective. They are not ill. They don’t need it. So they say, “Don’t do anything that might hurt us. It is better to be safe and take a long time and put it on the market.” That’s fine. But if you are a patient, you say, “Hey, wait a minute. I am willing to take a little risk. I am willing to take a little risk. I am in bad shape.” So you have to keep those things in mind when you listen to the arguments. In most all the cases, the patients certainly are on one side, in a sense, and the consumer is on the other.

With that, I reserve the remainder of my time.

Mr. KENNEDY. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator has 2 minutes.

Mr. KENNEDY. I yield 1 minute to the Senator from Rhode Island.

Mr. REED. I thank the Senator from Massachusetts for yielding time. Very briefly, what we have done in the overall FDA law is create an incentive for companies, under section 510(k) to get approval of class I and II devices, to go out and pick out existing devices and say the new device is substantially equivalent. This, I think, provides pressure for companies to go out and simply say we are going to do exactly what these other devices do, even though their new design might have many more capabilities. This is not an academic problem.

Take, for example, the issue of a biopsy needle. Typically these needles are very small. They remove a very small amount of tissue, about the size of a pencil tip. If the FDA was presented with a new biopsy needle that was claimed to be simply for biopsy of tissue but in fact removed 50 times that amount of tissue, a much, much larger bit of tissue, the suspicion would be that this is not just for biopsies, it’s actually to remove the lesion. Yet under this law, today, as we speak, they could not look behind that claim on the label. They could not look behind in it and say, give us some data about the removal of lesions. This is a serious public health problem. That is what we are addressing today. I hope, with Senator KENNEDY’s direction and leadership, we can resolve this along with Senator JEFFORDS and his colleagues. I yield the remainder of my time.

Mr. JEFFORDS. I yield to the Senator from Indiana 2 minutes.

Mr. COATS. Mr. President, I don’t intend at this particular point to get into a specific discussion over section 404. I just urge—clearly, there is a differing point of view. If the FDA was presented with a new biopsy needle that was presented with a new biopsy needle that was claimed to be simply for biopsy of tissue but in fact removed 50 times that amount of tissue, a much, much larger bit of tissue, the suspicion would be that this is not just for biopsies, it’s actually to remove the lesion. Yet under this law, today, as we speak, they could not look behind that claim on the label. They could not look behind it and say, give us some data about the removal of lesions. This is a serious public health problem. That is what we are addressing today. I hope, with Senator KENNEDY’s direction and leadership, we can resolve this along with Senator JEFFORDS and his colleagues. I yield the remainder of my time.
have with scheduling the Interior appropriations bill—to bring the amendment to the floor and then let us have the debate and then let the Senate work its will by vote and then go forward. Hopefully, this is not something that is going to further delay passage and then implementation of FDA reform.

Every day we delay, many things happen, most of them bad. No. 1, we move ever closer to September 30, at which time the PDUFA, the drug prescription which is used to expedite the individuals with the resources necessary to expedite drug approval, expires. That expires on September 30. The House has yet to act on this. They are waiting for the Senate to act. We are trying to wrap up appropriations bills. The clock is ticking and we need to move forward with this so we can allow the House to go forward, get into conference, get the bills back here. I wonder if I can ask additional time from the Senator from Vermont? Maybe an additional minute or two. I don’t know how much time is left.

Mr. JEFFORDS. The Senator can have whatever time he wants.

Mr. COATS. I thank the Senator from Vermont.

Mr. President, it is going to be extraordinarily difficult for us to finish our business on this bill, unify the different positions between the House and the Senate, the legislation to the President of the United States before September 30 so we do not have to lay off people at FDA, so we do not have to further delay review of devices and drugs and health-saving and health-improving and lifesaving products for the American people. That is what all this is about, is expediting the process; not to short-circuit the process; not to short-circuit the process. The clock is ticking and we need to move forward.

The United States lags dramatically behind our foreign competitors. But more important than that, we have American citizens who are being denied access to health-improving and life-saving drugs and devices because of this huge backlog at FDA. So, we can continue to go through these debates, as the Senator from Vermont said, 2 pages out of 150 pages—an important part but a small part of the entire, overall reform bill.

I hope we can come to some reasonable agreement in terms of bringing forward amendments; where there are disagreements, agreeing to a time limit on debate of those amendments, let each side present their case and then let the Senate vote on the matter and then move forward. Delay, delay, delay simply postpones what is, or at least what I believe is, inevitably going to happen and what should happen. That is that a majority of the Members of the U.S. Senate, on a bipartisan basis, and a majority of the Members of the U.S. House of Representatives, on a bipartisan basis, and the vast majority of the American people, want to see changes in the current FDA so they can bring lifesaving devices and drugs and health-improving devices and drugs safely but efficiently to the marketplace so that people can utilize those without having to get on a plane and go to Mexico or a foreign country, so we do not have to keep shifting and moving, moving, moving out of the United States into areas which have a more reasonable and effective review process.

Mr. JEFFORDS. I am not sure what all this is about, is expediting the process; not to short-circuit the process; not to short-circuit the process.

Mr. COATS. I thank the Senator from Vermont.

Mr. President, it is going to be extraordinarily difficult for us to finish our business on this bill, unify the different positions between the House and the Senate, the legislation to the President of the United States before September 30 so we do not have to lay off people at FDA, so we do not have to further delay review of devices and drugs and health-saving and health-improving and lifesaving products for the American people. That is what all this is about, is expediting the process; not to short-circuit the process; not to short-circuit the process. The clock is ticking and we need to move forward.

Mr. JEFFORDS. The time of the Senator has expired.

Mr. COATS. I ask unanimous consent for 1 minute.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. JEFFORDS. Mr. President, I will say, we will continue to cooperate to bring this to an expeditious ending. I thought we had that agreement. I am ready to enter another one. I hope by the time the Interior bill is over, we will have one. I urge us to work together. I yield back whatever time I have.

Mr. COATS addressed the Chair.

Mr. JEFFORDS. The PRESIDING OFFICER. The time of the Senator has expired.

Mr. COATS. Mr. President, I am not sure what unanimous consent is required.

Mr. JEFFORDS. The PRESIDING OFFICER. One minute, I believe.

Mr. COATS. Mr. President, I ask unanimous consent for 1 additional minute to respond to the remarks of the Senator from Massachusetts.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COATS. Mr. President, the Senator from Massachusetts offers expeditious process. One needs to keep delaying it. We have been in negotiation for months, if not years. This particular item has been discussed, debated, turned upside down, dissected. I think we are at the point where the best way we can expedite this is simply to have the amendment offered, have the debate, let the Senate work its will. There are Members on both sides who are willing and able to present the case, and then let the Senate work its will.

Having said that, this Senator has on two occasions now responded to the Secretary of Health and Human Services, who personally called and asked...
that I look at new language. I said I will be happy to look at new language, but it just seems every time we look at new language and make a concession, there is another issue that pops up. We made 30 some concessions. We don’t want to have 31 and then 32.

I appreciate the offer of the Senator from Massachusetts, and we will continue to operate in that spirit.

The PRESIDING OFFICER. The time of the Senator has expired.

DEPARTMENT OF THE INTERIOR
AND RELATED AGENCIES APPROPRIATIONS ACT, 1998

The PRESIDING OFFICER. The clerk will report the Interior appropriations bill.

The bill clerk read as follows:
A bill (H.R. 2107) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1998, and for other purposes.

The Senate continued with the consideration of the bill.

Mr. KENNEDY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1388

Mr. GORTON. Mr. President, what is the order of business?

The PRESIDING OFFICER. TheAshcroft amendment is the pending business.

Mr. GORTON. Mr. President, I understand that the proponents of the Ashcroft-Helms amendment are not willing to vote on that amendment today and wish that vote to take place tomorrow so that they have a greater opportunity to discuss it both here on the floor of the Senate and in public. I am firmly of the opinion, because that is the amendment that deals with the National Endowment for the Arts in the most radical fashion, that it should be voted on first, because if it is defeated, there are other amendments, including one sponsored by the President, that may get a fairer and broader view if they are voted on in any order.

So I intend, and I believe the majority leader intends, to try to see to it that all Members who wish to speak on the National Endowment for the Arts and any of the four amendments that have been offered and spoken to so far have the opportunity to do so and that, at an appropriate time tomorrow, we vote first on the Ashcroft-Helms amendment, second on the Abraham amendment, third on the amendment of which the Presiding Officer is the sponsor, fourth, the amendment of Senator Hutchison of Texas, with the hope that people will have had the ability to say all they wish to say about them in the course of discussing all of them together. There is no agreement at this point that this will be precisely the procedure, but I think it is likely.

In the meantime, for the remainder of the afternoon, there are two controversial provisions relating to Indian matters. I am attempting to get the other Senators, in addition to myself, to the floor as soon as possible to consider those, so that they can vote but that will take a certain degree of discussion.

I have been told that Senator Bumpers will be willing to present one or more amendments this afternoon, to have them debated and perhaps to have a vote by early this evening. Assuming that he and/or his staff are within hearing, I hope that he will come to the floor as soon as possible and present his amendment and will notify his opponents or ask us to notify his opponents of the fact that he is doing so, so that we can talk about them.

We should not waste this afternoon, Mr. President. If we get some business accomplished today, there is still a very real possibility that we can finish debate on the Interior appropriations bill by tomorrow evening and go on to other questions. The debate so far has been healthy. I look forward to any Member who wishes to come to the floor and propose an amendment. With that, I yield the floor.

Mr. DOMENICI. Will the Senator yield?

Mr. GORTON. Yes, I will be happy to.

Mr. DOMENICI. Mr. President, I want to ask the Senator a question. I think he knows I am interested in the two Indian issues, and I gather at some point he is going to try to get the three or four Senators who have been working on this with him here?

Mr. GORTON. I asked, or caused to be asked, a question of Chairman McCaIN, yourself, Senator Stevens, and Senator INOUYE to gather together as soon as we can make it. I think the lead in that is Senator Campbell as chairman of the Committee. As far as we can arrange that, even if we are on something else, I will see if we can interrupt and get this part of the bill completed.

Mr. DOMENICI. I thank the Senator very much. I yield the floor.

Mr. GORTON. For the time being, Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

NEED FOR INDEPENDENT COUNSEL IN CAMPAIGN FUNDRAISING PROBE

Mr. SPECTER. Mr. President, the competency and appearance of integrity, if not the integrity itself, of the Department of Justice was called into sharp question when Attorney General Reno, FBI Director Freeh, and CIA Director Tenet briefed the Senate Intelligence Committee last Wednesday and the Senate Governmental Affairs Committee on Thursday.

In last week’s briefing, the CIA Director advised that the CIA obtained that information about “X” from the FBI, and it only put the FBI information on “X” together with the new report on “X” after an analysis which was made following a request by Senator Bennett at the July 1997 FBI-CIA briefing of the Governmental Affairs Committee.

The FBI Director advised that the information about “X” had been in the FBI files since September or October of 1995 on one report and since January 1997 on a second report. The FBI Director advised that the Governmental Affairs Committee was not told about that information at the July 1997 briefing because the FBI did not know it had the information.

These disclosures raise a fundamental question of whether the FBI deliberately withheld the information or was not competent enough to know what information it had in its own files. Either alternative is a strong indictment of the FBI.

With the new information on “X,” the question is: Where do we go from here on dealings with the Department of Justice and the FBI?

When the FBI Director said the FBI did not know the FBI had the information on “X” in its files, based on my extensive dealings with Director Freeh, I accept and believe that he personally did not know the FBI had the information in its files. Frankly, I am not so sure that others in the FBI did not know of the import of that data.

This matter obviously adds fuel to the fire on recent questions about the FBI and Director Freeh’s leadership of that agency. There are questions on many matters, including the FBI laboratory, the FBI’s handling of the interrogation of Mr. Richard Jewel in the Atlanta pipe bombing case, the FBI allowing White House people to look at confidential background files, and the FBI’s handling of the Ruby Ridge incident after Judge Freeh became director, as well as before.
But notwithstanding those matters, I believe that Director Freeh is doing his job about as well as it can be done with that giant agency which is ever-expanding and taking on new worldwide assignments. But I do believe that Director Freeh is going to have to find out who has these connections with the Government of China and then to cross-check those names against people who have appeared in the news media as major contributors to candidates or campaign committees. When I refer to this context, it is obviously not intended to be a comment on any special group. It is hard to understand why that cross-checking of a simple index was not done by the FBI. And it is even harder to understand why the Attorney General's independent counsel, which I thought was to have some advanced knowledge since she had met with the Intelligence Committee, and the Governmental Affairs Committee, and to cross-check those names against people who have appeared in the news media as major contributors to candidates or campaign committees. And then to cross-check those names against people who have appeared in the news media as major contributors to candidates or campaign committees.

When I refer to this context, it is obviously not intended to be a comment on any special group. It is hard to understand why that cross-checking of a simple index was not done by the FBI. And it is even harder to understand why the Attorney General's independent counsel, which I thought was to have someone in charge who was not allied with the administration, not beholden to the administration, and not motivated in any way to favor the administration.

It is not unusual, as a matter of common experience, for subordinates to do what they think their superiors want whether or not they correctly speculate on their superior's wishes. Beyond giving a clear signal to all the subordinates an independent counsel would be in a position to press hard on a continuing basis for people to make all searches and analyses which were not done here.

Leadership and intensity establish a tone and purpose. From numerous indicators, that tone and purpose are not present in the current Department of Justice.

The Attorney General said at last Thursday's briefing that she was "not comfortable now to discuss coordination with the Governmental Affairs Committee but would "want to sit down and talk with the Department of Justice task force." There are two problems with her statement. First, she had ample time to discuss the matter with the task force since she had met with the Intelligence Committee the day before and certainly had some advanced knowledge prior to that meeting. Second, she has continually said she would be willing to respond to our request, but consistently there has been no followup.

The Governmental Affairs Committee was further advised at last Thursday's briefing that if in the future the Department of Justice found information like that on "X", they would "very seriously consider and talk about bringing that information to the committee." That is palpably insufficient. An independent counsel should be appointed so that the individual can press to obtain all such information on a continuing basis and so that there is no doubt about the duty of all units in the Department of Justice, including the FBI and the Governmental agencies, to follow the direction of the independent counsel.

In short, Mr. President, we have a situation here where the FBI has information in its files since September or October 1995--almost 2 years ago--and other information since January 1997. That information is very important in linking an individual who is reputed to be a major campaign contributor, as noted in many news accounts, with a plan of the Government of China. Yet, that information was not made available to the Governmental Affairs Committee, and on the representation of the FBI not even known to the FBI.

It came to light only because the FBI provided information to the CIA. And the CIA had done an independent analysis at the request of Senator BENNETT. Absent that request by Senator BENNETT, the independent analysis of the CIA, today, we would not have that important link as we seek to understand the puzzle, put together the pieces on the so-called dotted lines, and understand what is going on in this matter.

If we had independent counsel vigorously pursuing these matters and a clear-cut understanding throughout the entire Department of Justice and all Federal agencies, then we would have a realistic opportunity to get to the bottom of whatever is going on and take the corrective action. This is the link that I suggest is a very, very powerful link in the chain of evidence and circumstances really demanding appointment of independent counsel.

I thank the Chair and yield the floor. In the absence of any other Senator seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ASHCROFT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 1998

The Senate continued with consideration of the bill.

AMENDMENT NO. 1188

Mr. ASHCROFT. Mr. President, I am aware there are other Members of this body who are going to be coming to the floor to speak on other amendments. However, because of the absence of debate at this moment, I will add additional thoughts to the thoughts I have already expressed regarding the need to stop funding the National Endowment for the Arts.

I have made my position clear here, and I hope I can add something by way of suggesting that there are a variety of reasons why it is time for us to stop spending the hard-earned resources of taxpayers to theoretically support or engender culture or the arts in this country.

I find it somewhat amusing for individuals to suggest we need to have a Federal subsidy in order for people to be artistic. For us to come to that conclusion involves us in what is a substantial repudiation of American heritage, culture and art.

We began as a nation long before the midnight ride of Paul Revere. As a matter of fact, we remember the poem: 'Twas late in April of '75. Hardy a man is still alive.

That can remember that special day and year

Of the midnight ride of Paul Revere.

Those who say you have to have subsidies in order to have quality art would have to wonder how that poem ever came into existence. Or they might say you have to have a subsidy in order to have quality art. Well, I don't know, but I believe that some of the best paintings and some of the art and some of the literature of a hundred years will stand inspection very well and stand in comparison very well with items that have been produced more recently.

So I want to say for the first several hundred years of this culture on this continent we managed to muddle through, but I don't think we muddled through it all. We mastered, through creating things that were truly artistic and certain things of the kind of art that would speak to people and that they could understand.

I was interested in noting an article by William Craig Rice, who is a poet and an essayist, who teaches expository writing at Harvard University. As an individual who went to a competing institution, I am not accustomed to citing Harvard University, but you would think if there would be anyone who would be able to have insight about this, it might come from Harvard University, and you might expect them to be uniform in their support of the NEA. He lists objections to the NEA. He says that the NEA refused to fund a conservatory in New York City because its students were required to participate in the ballet but that the old masters did. They could actually draw people and not just put paint on paper. That disqualified the particular institution from participating in the NEA funding.

He points out that the NEA said that being able to draw people that looked like people would hamper the creativity of artists.
I wonder whether the NEA has this figured out. I don’t believe that people are not creative because they can draw the human figure. I don’t think you would want to say that Rembrandt was not a creative individual. I don’t think you would want to say Thomas Hart Benton, from my home State, with his ability to capture people at work, people bringing this Nation into existence, people conducting themselves in a way that makes America strong—was not a creative individual. He shows how people in the fields, he showed people in the Civil War, he showed people at play, but he showed America as America was and for the strength of it. I don’t think being able to do that hampers creativity.

William Craig Rice, who is a poet and essayist, who teaches expository writing at Harvard, says, “The NEA recently refused funding to an art colony on aesthetic and sociopolitical grounds and then the inclusion of performance artists and installation artists a condition of future funding.” So you start criticizing people because they are the wrong sociopolitical mix. He reminds us, the National Endowment for the Arts taking taxpayers’ resources, trying to impose on people some political correctness or sociopolitical correctness, the right kind of mix, in order to satisfy the bureaucracy. These kinds of things—denying funding because they insist that people learn how to draw so that they are recognizable figures, denying funding because there is an inappropriate sociopolitical mix among the artists—sound to me like Government management of what people are thinking and of the kind of people with whom they would associate. It seems to me that is not what we earn money for and pay taxes for: so Government could discriminate against someone because they were not of the right sociopolitical mix.

Mr. Rice, of Harvard University, further writes that “Nowadays, NEA grants are weighted toward political correctness, political correctness. I wonder if, really, as Americans want to try to foster and advance political causes through a subterfuge which we might label as the National Endowment for the Arts.”

Now, his is not the only voice that has been raised in the arts community against the NEA. His is not the only voice which has alleged that the NEA is really an enemy of the arts, which does it this way: “The marketplace, with its potential for democratic engagement and dissemination, is hardly the enemy of the arts. The burgeoning American theater of the 19th century owed nothing to Washington. And any support by the Federal Government to tell us just how profound this is—whatever it is—and that we should support this because, well, because Government says to support it. There are those who came to the floor yesterday who said we need the National Endowment for the Arts not because it is a big part of arts funding; they recognize it is 1 percent or
wall fell, too. Thankfully, the people down, it wasn’t long before the Berlin and it collapsed. And when it came should decide how to allocate re-

and we don’t believe Government in this country, we have all said that

are in serious distress, and we hear the

subject of relief over and over again to

are free there, and they are rejoicing over their freedom, and the govern-

ment that was at the center of things no longer tells them what to produce or what not to produce. It is their privilege as free citizens to decide about how things ought to be produced and what they really want in the marketplace, either rewards them or punishes them. If they don’t produce things that are particularly good, they don’t sell well. That has a way of suggesting that they should change their minds.

Here we have the National Endowment for the Arts with the argument or suggestion that it is a good thing to have Government telling people from the center of the Nation what they should or should not reward with their own support. Well, frankly, that is a failed system. I could understand short memories, but it seems to me that while we are continually reminded of the poverty of that system and the ab-

ject failure of that system by countries like and others, we should at least remember long enough to know that we should not be embracing some sort of resource allocation strategy in the United States of America whereby we put a Good Housekeeping Seal of Approval on seven letters that may mean something somewhere, and say, folks, with our help, you can learn to recognize a real buy in art when we tell you that it is a real buy.

I appreciate the opportunity to make these marks. I appreciate the opportu-

nity for the Senate to go forward on the National Endowment for the Arts. I think it is time to say to the American people, who are taxed at a higher level than ever before, we believe you work hard for your resources and we should not take your hard-earned dollars and try to tell you what to support and what not to support artistically. We should let you have some of those re-

sources to spend, believing you can spend your resources better on your own family than we can to subsidize what the Government has decided is art.

I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER (Ms. Collins). The Senator from Washington is recognized.

Mr. GORTON. Madam President, I note the presence on the floor of Senator CAMPBELL, who is the chairman of the Committee on Indian Affairs. He and I and Senator STEVENS, Senator INOUYE, Senator DOMENICI, and Senator MCCAIN have had extensive discussions over sections 118 and 120 of this bill, both of which relate to appropriations for or conditions under which Indian tribes operate in our American system. Both are of considerable importance.

We have reached agreement with re-

spect to the bill and with respect to what will take place after this bill has passed. In that connection, I think it is a matter of some intense relief to many of my colleagues that what we are going to do is not require a rollcall vote at this point. So it does seem to me, in the absence of any Member here who is willing to send up an amend-

ment that will require a rollcall vote, that we should go through this matter. Two of the Senators are present on the floor. I believe others are coming.

With that, I yield the floor and hope the Chair will recognize Senator CAMPBELL.

Mr. CAMPBELL addressed the Chair.

Mr. CAMPBELL. Madam President, I have an amendment, but before I send my remarks to the Chair, I want to make a few remarks on H.R. 2107, the fiscal year 1998 Interior spending bill. I certainly want to commend the managers, Senator GORTON and Senator BYRD, for their ef-

forts in constructing a spending bill that balances the competing interests of the appropriately 27 different agen-

cies and programs included under the jurisdiction of this committee. As the chairman of the Committee on Indian Affairs, I want to acknowledge both Senator GORTON’s and Senator BYRD’s efforts in funding Indian programs that are administered through the Bureau of Indian Affairs and Indian Health Service at the levels that meet or ex-

ceed the President’s fiscal year 1998 budget request.

Overall, the funding for these two agencies, which accounts for the great bulk of Federal spending on Indian-re-

related programs, is significantly in-

creased over fiscal year 1997 enacted levels to the tune of about $250 million. The committee has given priority to funding basic services that are pro-

vided to Indian communities through tribal priority allocation (TPA) of the BIA and through direct services pro-

vided by the Indian Health Service, while also funding several important construction initiatives, of which there is currently a tremendous backlog.

While I have supported the priorities given to funding Indian programs, I have shared my concern with many colleagues over two provisions that re-

main in the bill. Senator GORTON has alluded to these two provisions, section 118 relating to the means testing of TPA funding, and section 120 relating to the broad waiver of immunity im-

posed on tribal governments. Both are broad policy-related items that I felt should not be included in this spending measure.

I am happy to announce that after several meetings—and Senator GORTON alluded to those two items—section 118 relating to the means testing of TPA funding, and section 120 relating to the broad waiver of immunity im-

posed on tribal governments. Both are broad policy-related items that I felt should not be included in this spending measure.

As I informed my colleagues on the Appropriations Committee prior to
The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The question before the Senate is the excepted committee amendment beginning on page 52, line 16.

The excepted committee amendment is as follows:

SEC. 118. (a) No funds available in this Act or any other Act for tribal priority allocations (hereinafter in this section ‘‘TPA’’) in excess of the funds expended for TPA in fiscal year 1997 (adjusted for fixed costs and internal transfers) pursuant to a blanket waiver or blanket exemption by the Bureau of Indian Affairs (hereinafter in this section ‘‘BIA’’) until sixty days after the BIA has submitted to the Committee on Appropriations of the House of Representatives the report required under subsection (b).

(b) The BIA is directed to develop a formula through which TPA funds will be allocated on the basis of need, taking into account each tribe’s business revenues from all business ventures, including gaming. The BIA shall submit to the Committee on Appropriations of the House of Representatives the report required under subsection (b).

(c) The BIA shall provide alternative means of measuring the wealth and needs of tribes.

(d) Notwithstanding any other provision of law, the BIA is hereby authorized to collect such financial and supporting information as is necessary from each tribe receiving or seeking to receive TPA funding to determine such tribe’s business revenue from business ventures, including gaming.

(e) The BIA shall only be available for distribution—

1. To each tribe to the extent necessary to provide that tribe the minimum level of funding recommended by the Joint Tribal/BIA/DOI Task Force on Reorganization of the Bureau of Indian Affairs. In determining the allocation of remaining funds, the Task Force shall consider the recommendations and principles contained in the 1994 Report. If the Task Force cannot agree on a distribution by January 31, 1998, the Secretary shall distribute the remaining funds based on the recommendations of a majority of Task Force members no later than February 28, 1998.

Mr. CAMPBELL. Madam President, I am very pleased to offer this substitute amendment that our colleagues have worked on, which accomplishes several things.

First of all, it holds the tribes harmless to the fiscal year 1997 TPA levels; it follows the recommendations of the 1994 Joint Tribal/BIA/DOI Task Force report by providing funding to the 309 small and needy Indian tribes; it provides $15.5 million for fixed costs and internal transfers; it provides for $17.1 million in increases to formula-driven programs; instead of having the BIA or the Congress allocate the remainder, it
creates a mechanism comprised of Interior and BIA officials and tribal representatives from around the country to distribute the remaining $27.8 million.

I think that is probably all we need for an amendment. With that, I move the amendment.

The PRESIDING OFFICER. Is there further debate?

Mr. MCCAIN addressed the Chair.

Mr. MCCAIN. Madam President, first of all, I want to express my appreciation and high regard for the leadership of my friend from Colorado, Senator CAMPBELL, on this issue. In his role as chairman of the Indian Affairs Committee, he has taken an active and vigorous role on Native American affairs. I am proud of the job he is doing.

I know I reflect the view on both sides of this aisle on the outstanding job that he is doing. He is uniquely qualified—uniquely qualified, Madam President—to address the issues that affect Native Americans in our society today.

Second, I thank the Senator from Washington, Senator GORTON. He has strongly held views on these issues, as we know. Senator GORTON’s issues have been made clear to those of us on the Indian Affairs Committee, of which he is a distinguished member. He has worked very hard on these issues. We have had significant and recognized philosophical differences, but our debate and discussions on these issues have been characterized by respect for each other’s views. I have the utmost regard not only for his views, but Senator GORTON has long experience in these issues dating back to when he was attorney general of the State of Washington and tried cases before the U.S. Supreme Court regarding Native Americans.

I understand his advocacy, and, frankly, sometimes his frustration. I am very pleased to see the path of the agreement is that the chairman of the Indian Affairs Committee has agreed to hold hearings to consider Senator GORTON’s legislation, which is the proper way to carry out our legislative work.

I did point out to Senator GORTON—and he knows full well—that his proposal will probably not receive the majority approval of the Indian Affairs Committee. The purpose of the hearings and the purpose of the debate and discussion is to educate our colleagues.

I am very pleased that Senator GORTON will withdraw that provision which would have provoked profound, intense, and emotional debate on the floor of the Senate and has decided, albeit with some reluctance because of his impatience over his view of our failure to address these issues, to agree to take it through the Indian Affairs Committee.

I thank Senator GORTON. I really do, because Senator GORTON has taken a position as chairman of the subcommittee, he had every right—even though I disagreed from time to time about legislating on appropriations bills—to bring this issue to the floor as part of his bill. We proved in recent days that we do give the utmost respect to committee chairman and subcommittee chairmen in their work.

I thank Senator STEVENS, chairman of the Appropriations Committee, Senator STEVENS, who is as knowledgeable on Native American issues as anyone in this body, played a key role in negotiating the agreement and settlement that we came to, along with my friend, Senator INOUYE, and, of course, along with Senator CAMPBELL, on these issues.

Senator DOMENICI, I might point out, in his usual articulate, vigorous, and certainly nonconfrontational fashion played an important role in the spirit of the discussions that we had in Senator STEVENS’s office.

The upshot of it all is that really, Madam President, there are six old guys here that know each other pretty well. We know how to act in what is the best interests of Native Americans, the interests of this body, and, very frankly, the continued bipartisan—indeed, nonpartisan—addressing of Native American issues.

I think we have a very, very good resolution. It would not have been possible without all the figures that I mentioned, and I believe that we will continue.

If I could, finally, caution my colleagues, there will continue to be issues before this body and the Nation concerning Native Americans. There is population growth, which brings Native American tribes and non-Native Americans into collision with one another. There is an increase in Indian gaming, which in the view of many Americans has made all Indians rich. And, by the way, that is far, far from the case. There is a total of about 10 tribes that have become wealthy. There is continuing constitutionalization. There will be continued Supreme Court decisions, including the recent ones concerning and affecting the State of Alaska.

I urge my colleagues to get involved in understanding these issues. But I have some comfort in the knowledge that we have experienced people such as Senator CAMPBELL, Senator INOUYE, Senator STEVENS, Senator GORTON, and Senator DOMENICI who have many, many years of experience with these issues.

Again, I thank my colleagues for resolving this very difficult issue in a more than amicable fashion.

I yield the floor.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Madam President, I thank my good friend from Arizona for his comments concerning my participation in this dialogue on this amendment which has just taken place in my office. Let me state at the outset that I believe that in this country there is a period of rising expectations on the part of our Alaska Native and native peoples that there will be more assistance coming to them from the Federal Government. And, of course, we all seek to have greater self-determination on the part of those people who are part of our Indian tribes and native peoples of our country. The great difficulty is that this is not just an expectation but an increasing demand now for additional money to enable these peoples to carry out the legitimate roles that they have in their tribal and national organizations.

This comes at a time when we are living under a budget ceiling with diminishing resources, as far as the Department of Interior is concerned, caused primarily, in my opinion, because of the vast increase—the enormous increase—in the amount of interest we are paying on the national debt, which is literally squeezing out a lot of the items that we were able to afford previously. We are working on that in connection with the balanced budget process. But it is happening on the reservations in the contiguous States and small villages throughout my State, and throughout our Nation, to understand that there is a limit on the amount of money we have available to put into such funds, like the Tribal Priority Allocation Fund. We face this year a situation where there is a budget request for an increase in money. Yet, because of actions that have taken place in the last 3 years, there are almost 1 percent more tribes in number than we previously dealt with under this account. Those are primarily in my State, the State of Alaska. Alaska now has 226 different entities that are called tribes by the Department of Interior. In the past, they were Native villages. The population of the Native villages belonged to the several different tribes in our State.

The net result of this is that, despite the increased request for funds, it is not really possible to meet these legitimate requests, and, as I said, in some instances, diminished or decrease in money. This has led to a series of alternative suggestions—some from the Senator from Washington, as the chairman of the Appropriations subcommittee dealing with these issues, and others from those who serve on our Indian Affairs Committee, led by my good friend from Colorado. And I say to the Senate that I think it is time that we really have some more information to deal with this. I know some people are reluctant to solicit that information. But I have joined the Senator from Washington in asking the GAO to do some examination into the various types of options that may be available to Congress to deal with these increasing demands which exceed our ability to increase funds in the future.

It does seem to me that we have to realize, despite our own personal feelings that some people might have on the subject, that the people who live on Indian reservations and in these very
isolated Indian and Native communities in my State are literally the poorest of our poor. They are the people that need our consideration, and our help, more than any I know in the Nation. Many of us have spent years trying to find ways to help them deal with the problems of one another. There has been no real panacea. We have not discovered a way yet. But we clearly now have increasing participation in governmental affairs in a democratic way in most of these tribes and villages of our Nation. It is that these tribal priority allocations will, in fact, be used to provide a greater degree of democracy, a greater degree of participation, and a greater attempt to satisfy the needs of the people who should be receiving the benefits of the Federal money that we provide through the Bureau of Indian Affairs. We all have some serious questions about the BIA. It is an institution that may well have outlived its usefulness in the sense of being able to deal with the problems of the native American and Alaska Native people. But, for the time being, it is the only institution we have.

As Members of Congress we are vitally interested in the affairs of the Indian tribes and Alaska Native Villages. We need to take more time in trying to not only work out the differences among us, but also work out solutions with respect to how the Federal Government can further the aspirations of these people to become more able to deal with the problems of the present and the future and better able to find a way to preserve their own culture and have greater participation in American affairs.

For that reason, I am pleased that we have had these meetings. I think that the meetings that have taken place between the Senators who are on the Appropriations Committee and the Indian Affairs Committee have been most helpful in helping to understand one another but understand some of the problems that are different. They are different in Colorado, they are different in Arizona. They are different in Hawaii. Most people do not think of Hawaii having Indian problems. But there are issues involving the indigenous peoples in Hawaii that are very, very complex. My friend from Hawaii is having Indian problems. But the Senator from Washington for making this day possible.

Mr. President, this is a battle day—an important day in Indian country. And I am certain that Indian country applauds the resolution that has been reached concerning sections 118 and 120 of this bill.

So, Mr. President, I rise to join my colleagues in applauding and commending the distinguished Senator from Washington for making this day possible.

I am well aware—and I am certain that all of us are well aware—of the controversy that sections 118 and 120 have engendered over the past 2 months. It has been a difficult time for all of us.

Indian country has been vocal in its opposition to these provisions—and I believe rightly so—for these sections go to the very essence and the very foundation of our relationship with Indian governments.

As my chairman, the distinguished Senator from Colorado, Senator Nighthorse Campbell, has indicated, section 118 will cause us to revisit the commitments this Government made to Indian nations in over 800 solemn treaties. Most Americans are not aware that our relationship with the Indian country is based upon treaties, the Constitution of our land, decisions of the Supreme Court, and the laws of our land. These are laws that enable the United States to exercise dominion and control over 500 million acres of land which once belonged exclusively to our Nation’s first citizens. As Chairman Campbell has indicated, section 120 would have stripped tribal governments of one of the most fundamental attributes of their sovereignty.

So, in the days ahead, I hope we can focus on the underlying concerns that sections 118 and 120 were designed to address in a venue that will enable the full participation of those who would be most directly affected by these provisions, the tribal governments and the citizens of Indian country. For it is my sincere belief that the solutions to these matters can be found in Indian country and that the tribal government leaders will join us in this effort, and that is the way it should be. If we are to legitimize it, we have to do it only after we have given careful and thoughtful consideration to these matters. We should have the benefit of all affected citizens, Indians and non-Indians, and whatever we come up with ought to have the benefit of some consensus.

With this in mind, I have given my personal assurance to the chairman of the Interior appropriations subcommittee, the Senator from Washington, that we will seriously and deliberately address these matters in the authorizing committee. We have received assurances of the chairman of that committee, Senator Ben Nighthorse Campbell.

In the interim, I am pleased we have been able to reach agreement and that we have done so in a manner that will enable us to work together in partnership with Indian country as well as all affected citizens, Indians and non-Indians, and whatever we come up with ought to have the benefit of some consensus.

So, Mr. President, once again, may I applaud and commend my friend from Washington, Senator Slade Gorton.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. GORTON. Mr. President, in the interests of clarity in dealing with two but distinct issues that have been raised, and the Senator from Colorado has agreed, to deal separately with two amendments on his part to sections 118 and 120. So, while most of the speakers have talked about each, to this point, now, before we vote on the proposal of the Senator from Colorado, I am going to address only section 118, the section that calls, in the form in which it was reported by the Indian Affairs Committee, for a study not only of the Indian country but the resources available to those Indian communities to support, in whole or in part, their governmental entities.

The tribal priority allocations, in the amount of just over three-quarters of a billion dollars, are directed at the activities, on the broadest possible scale, of the self-governing Indian tribal organizations all across the United States, numbering several hundred in total. And there are, it seems to me, two distinct questions even as we deal with this appropriation of more than three-quarters of a billion dollars of
the money of all of the taxpayers of the United States. The first is: Is the historic distribution of money from this account to the various Indian tribes done in a fair and rational manner? And, if not, what can be done to improve that method of distribution?

The second and quite distinct question is whether or not full support of Indian tribal governments is a permanent duty of the people of the United States; a form of entitlement or a matter of which the people of the United States, in addition to encouraging the development of self-governments, are also entitled to demand on the part of successful Indian tribes in their protection of these governing institutions—the tribal legislatures, the court systems, the police systems, and the like, systems that in our Federal system are paid for by the people of the United States. The point is whether or not in the United States, the Congress, the people of the States with their legislatures, and the people of cities, counties, and towns with respect to their governing institutions. And we ran into opposition in connection with each of these, a protection of the status quo in connection with each.

I took over the chairmanship of this subcommittee 2 years ago, and for 2 years asked the Bureau of Indian Affairs, when it justified its budget, about the formula through which it distributed its moneys to Indian tribes, without getting a satisfactory answer. Asked whether or not it had any ability to determine the relative needs of the various tribes in the United States, the reluctant, ultimate answer was no, the Bureau of Indian affairs didn’t have that kind of information, did not know in any detail the income of tribal governments through gaming, through rental of their properties and the like.

Moreover, it became quite clear that the Bureau of Indian Affairs didn’t care to get that information. The reason that it didn’t care about getting that information is that it does, in fact, believe that these payments are a permanent entitlement, a permanent burden on all of the other taxpayers of the United States, and that, therefore, while perhaps an examination of needs is appropriate, an examination of resources is not appropriate in any respect whatsoever.

With both of those propositions I disagree. While section 118 that exists in the bill today does not change the system and require a mandated distribution on the basis of a system of needs, which of course implies something about communities that cover the needs on the part of each individual tribe, it became evident that there is so much disagreement in Indian country with even a determination of the facts on which we can make a later determination of needs and resources that section 118 was unacceptable.

The proposal that Senator CAMPBELL has made, and with which I agree, deals rather narrowly with the distribution of the money in this appropriations bill, increased by something more than $75 million over the current year, and most particularly with the way in which any excess over last year’s distribution and other a formula already developed by the Bureau of Indian Affairs will be made. In that connection, it is a significant step and it is something with which I agree. Because it is insufficient, however, because it doesn’t even mention either needs or resources, it disinguing else very significantly is needed.

Before I get into that, however, much of the debate on the other side of this issue, many of the newspaper editorials, have spoken of the appropriation for tribal governments, so-called TPA, as an entitlement based on treaty—because there are several hundred treaties with various Indian tribes, the last of which was ratified in 1868—that we are in fact dealing with an entitlement, that at least, at relative needs, we should not look at the ability to provide for governments through the resources of Indian tribes at all because this is a matter of treaty obligation between the Government of the United States and these various Indian tribes.

I wish to make the point, as we look forward to a future debate on this issue, that there is no such treaty right. Mr. President, there is no such treaty right. We found one treaty with the tribe in Texas with the Bureau of Indian Affairs in perpetuity of several thousand dollars a year. Most Indian treaties, however, and we use here the treaty of Point Elliott in my own State, a treaty signed in 1855, that includes a clause very much like this one:

In consideration of the above cession [that is the lands the Indians were signing away] the United States agree to pay to the said Pequot Tribe from this year’s distribution and over a formula already developed in the Bureau of Indian Affairs, the sum of $150,000 in the following manner.

And it sets out declining annual payments for a period of 20 years, ending, presumably, in 1875, or in 1876. That is the typical Indian treaty with respect to a fiscal obligation on the part of the people of the United States. Obviously, that period of time ran out over a century ago. The optimism with which it was signed, the implication being that by that time the Indians would be integrated into the larger society, did not have the happy ending of the Pequot Tribe. The United States has gone through several phases of attitudes toward Indian tribes, toward their integration, toward their self-determination and the like. We are now in a period of time in which the strong public opinion, and opinion in this Congress, is in favor of self-determination, conscious self-determination in the Indian institutions.

The point I am making here is not to disagree with that policy. I think it is a perfectly appropriate policy and one that covers all of the facts. The point that I am making here is that it is a discretionary policy, and that this three-quarters of a billion dollars is appropriated as any other discretionary account is in the Congress of the United States. Therefore, it is totally appropriate for us to determine whether we think the money is being well spent, whether we think it is being fairly distributed, whether we think there is a relationship between relative needs and the ability for the Bureau of Indian Affairs to pay more than what the Pequot Tribe is zero. That is the tribe with the most successful gaming operation in Connecticut from this year’s distribution is $2,452. That is the tribe with the highest unemployment figure, 95 percent, down to the best of our ability to determine unemployment, 95 percent.

The original formula, I think, dates from sometime in the 1930’s. Under those economic circumstances, having no relation to the present day, these tribes’ governing authorities, of course, have various powers. Some provide more services than others do. But nonetheless, each year’s change has made this system worse and is exacerbated.

I will show you the same chart in a slightly different form, Mr. President. This form works from the Rosebud in the Dakotas, which have the highest unemployment, 95 percent, down to the Pequots that have zero. In other words, to the best of our ability to determine needs, we can’t have all of these tribes’ governing authorities, of course, have various powers. Some provide more services than others do. But nonetheless, each year’s change has made this system worse and is exacerbated.

Interestingly enough, the second highest distribution here is to the tribe that has the second highest unemployment. But the obvious import of these charts is that there is simply no relationship whatsoever—no relationship between the need, or the economic poverty, the unemployment on a given Indian reservation and the distribution of money to the governing
body of that institution from the Federal Government pursuant to these TPA’s.

One further point, of course, in connection with this question about treaties, most of the tribes in the United States are treaty tribes. The Senator from Alaska referred to the fact that by fiat, the administration created, I think, a couple of hundred new tribes in Alaska, none of which are treated as tribes, part of which, by that administrative action, will in a year or so fall into this kind of distribution of money. So the distribution has nothing to do with whether or not tribes are treaty tribes or non-treaty tribes. The tribes really do have anything to say about the issue.

We are distributing the money at the present time in a manner that is highly irrational. As a consequence, Mr. President, and I have authored a letter dated today to the Comptroller General of the United States in the General Accounting Office, asking for a General Accounting Office study of the system I have described to get to that system and how we can do better.

Our request does, of course, include in it a request to the GAO to make a determination, not only of the needs of the tribes, but of their ability to meet those needs with their own resources. We may well learn from the GAO that even it cannot answer that question, because the tribes will not release a sufficient degree of information for us to make an intelligent decision. Then we would be in the kind of legislation is necessary so that Congress can deal with this matter in a rational fashion. I ask unanimous consent that the letter that Senator Stevens and I have authored to the General Accounting Office be printed in the RECORD. There being no objection, the letter was ordered to be printed in the RECORD, as follows:

(7) recommendations for a formula for the distribution of TPA funds that takes into account the disparate needs, population levels, treaty obligations and other legal requirements with respect to the provision of governmental services, and the resources available to each Tribe to provide such services.

In undertaking the study the GAO should consider each and every tribe used by the BIA for the distribution of funds for other programs, the formulas previously used by the BIA or other federal agencies for the distribution of funds under the Tribal Priority System that was developed after enactment of the Indian Reorganization Act, and any formulas recommended by the 1994 Joint Tribal/DOI/BIA Reorganization of the BIA, the Commission on Reservations, Economics, the American Indian Policy Review Commission, and any other relevant commissions or reviews.

In evaluating the resources available to each Tribe for meeting governmental needs, the GAO should enumerate in its report the nature and availability of the information BIA needs to determine accurately the level of resources available to each Tribe for the provision of services. The report should include recommendations regarding any changes in law that may be necessary in order to obtain such information and what constitutes a de minimus level of revenue for which the cost of reporting or assessing such revenue would outweigh the benefit of obtaining that information. The report should also include recommendations regarding the distribution of TPA funds among Tribes.

Mr. President, I say, with respect to every issue that we have talked about here is going to give us a greater ability to make our points at some time in the future.

For their cooperation in seeing to it that we are moving forward on this issue, thank each one of them, and we will be back here, I suspect, at some time in the future to debate this and the other issue more on its merits. Because the other issue is distinct from this one. I hope as soon as others who wish to speak on their own, we will adopt the proposal, the amendment proposed by the Senator from Colorado, and then move on to the second one, and I will have a set of different remarks on that one.

Mr. DOMENICI addressed the Chair. The PRESIDENT OFFICER, the Senator from New Mexico.

Mr. DOMENICI. Mr. President, I ask the distinguished Senator from Colorado, Senator Campbell, and the distinguished Senator from New Mexico, Senator Gorton, would it be appropriate for me to speak now or would they rather proceed with something else? If they have to introduce a measure and want to get it done, it will be all right with me.

Mr. President, I say to my fellow Senators, I think the important thing for the hundreds of thousands of Indians in the United States and Indian country and the 10 percent of the population of the State of Colorado, who are Indian people. There are 22 different Indian tribes and pueblos in my State, living in a completely different style, but all Indians nonetheless.

The most important thing for them is we have won today. We did not lose on the issue of sovereignty as it pertains to their immunity in their court systems. We did not lose, in an appropriations bill, without adequate hearings, without adequate information on one of the most complex and historic-filled situations in the Government and our governance. We won, because those decisions to take away tribal judicial immunity, whether it be for 1
year or forever, have been withdrawn from this bill.

I thank the distinguished Senator, Senator SLADE GORTON, for withdrawing his judicial immunity provision. I think it has become absolutely and unequivocally discernible by everyone, that is a very complicated issue.

Later, I am sure, in this discussion, we are going to hear proposals about how that is going to be fleshed out and how we are going to talk about judicial immunity, the right to sue Indian tribes or not to sue them in the courts of America and the courts of the States. We are going to hear discussions perhaps on how hearings ought to be structured to get to the bottom of certain issues where inequity may require that some modifications be made. But essentially, for the Indian leaders and the Indian people who came here by the hundreds, at least, this year, their tremendous concern about what was going to happen to them if this occurred is gone from the scene.

The Senator from New Mexico is fully aware that the distinguished Senator, Senator GORTON, desires to fix some things that he feels are wrong with the distribution of money, and he feels that just as strongly as I feel that we ought to be very careful about what we do and that it is not a simple proposition. Even the two graphs that were put up that show the disparity in incomes and the disparity in the distribution of our Federal resources don’t tell the complete picture.

The picture is one of a tribal allocation system evolving over time filled with history, filled with court decisions, filled with Senators who have purposely helped certain tribes and not helped others, which causes some of these funding levels to be out of whack.

Nonetheless, the needs in Indian country are not debatable, because for every Indian person that has an average American income and an opportunity for a job and some assets, tribal or otherwise, that are significant, my guess would be 50 don’t, 50 are poor. Their tribes are poor. Their reservations are economically depleted. So I suggest, as I did early on when the issue of means testing arrived, that we ought to be talking about infrastructure, the right to sue, water systems, sewers—things that they have—water systems, sewers, roads—for they live, in most cases, in a pretty bad economic situation and a pretty deteriorated public environment with reference to infrastructure and the like.

It is mighty easy to say, let’s fix this formula and have somebody in government formulate a new means test for us, but I will tell you, it is a lot easier to say our responsibility should have been over the years and how much of the Indians’ plight is because of the laws we have and our failure to take care of the related trust responsibilities that we have.

The history of Indian people versus the United States of America is as old as some of the Supreme Court opinions written by Justice Chief Marshall back in 1830’s. I am sure Senator GORTON, who is an expert on the legal debates, knows about all those cases. While I am not as legally perfected, I know that there is not one simple evolution of the relationship of the Indian people to the American Government and to the States. It has evolved because of court opinions, it has evolved because Presidents have articulated American policy with reference to Indians. President Nixon articulated a policy of self-governance and self-determination, which has then been carried out by the Government.

So the next time we debate this issue, we will not just have three exhibits here, one of which quotes from one treaty, for I am sure that more than one of us will be steeped in the history of how we got to where we are. It is not going to be as simple as devising a new means formula and distributing federal money based upon some kind of new means testing.

It may be that treaties don’t govern all of these responsibilities, but I can guarantee you, the statutes are filled with commitments to the Indian people. Before we have this next debate and during the next hearings, we ought to be talking about all of those statutes that we are going to educate the Indian people, and then we never provided enough money: that says we are going to house them, and then did not provide enough money. Where does that come into the equation?

We said we wanted economic prosperity for Indians—but until the 1980’s through the highway trust funds, we hardly funded any roads for them. I can remember, when I arrived in 1973, $10 million was the level of funding for Indian reservations needed to get it up as high as $30 million. When we included Indians in our highway trust funds for the first time, the funding jumped dramatically to $50 annually, and in the most recent highway bill 6 years ago, we finally got it over the $150 million needed of Indian country out of the highway trust funds. In spite of them paying into the funds everytime they bought gasoline, we weren’t building any roads from this fund for them until the mid 1980’s.

Just a few remarks on judicial immunity. I believe it is incumbent upon the Indian leadership of this country to work with us, those of us who are genuinely concerned about their well-being and protecting their rights to self-determination and self-governance. We ought to work on some of the troubling areas where the lack of judicial review is something that is beginning to offend many people and those of us who are protective of our Indian people are beginning to ask questions about.

In that regard, Senator GORTON, in conversations that are off the record and not on the Senate floor, has talked about the fact that maybe the solution isn’t a total waiver of their judicial immunity. Maybe we need to examine these judicial areas that cry out for some kind of equity and fairness. I assume in the next year those will be looked at by various committees.

But in the final analysis, the important thing that happened here today is that, in my humble opinion, fairness prevailed because it would have been grossly unfair to waive tribal sovereign immunity. In fact I think it would have been wrong in the appropriations process to waive judicial immunity across Indian country so that Indian tribes can be sued by almost anyone for anything in any court. We would have wreaked havoc on Indian governance and we would have destroyed the tribes of our country in many cases. And this too is an evolving situation.

For in many of the cases where we have cited that the Indian tribes cannot be sued, they have insurance, I say to Senator INOUE, We found many of them are in fact settling lawsuits because they bought liability insurance. We have every reason to believe, in fact, that some of the suits that people talked about here on the floor were indeed covered by liability insurance. So those who sued tribes were not without a remedy.

But let us say to the tribal sovereign immunity, we have not jumped precipitously into changing that very large body of law with reference to the government and status of a recognized Indian tribe in terms of the courts of our land and judicial review of their actions.

And on the previous issue on means testing, in summary, I believe that justice prevailed and the right thing is done by us not acting to establish some formula or even indicate that we are setting down that path.

All we have done today is to set in motion some questions to the Government, the GAO. As indicated, there might be a lot of more questions of them. Then, in due course, means testing will be looked at in a manner that it should be looked at by appropriate committees.

I thank Senator GORTON. I was prvicy to the meetings where this resolution was finally arrived at. I was not there at every meeting, but nonetheless I was there in time. I was there in time to make sure that some ideas that were apparently gaining credence were denied their credence. And I feel very good about that. And we are now back together saying, let us work together and see what we can do.
I say to Senator Campbell, as chairman of the committee, our new chairman, I have served on your committee for a while, never as chairman because I could not do that, but I pledge to you my support as we move through the next year or so in trying to solve some of the problems that we have talked about.

I am convinced that it will not be a simple proposition of "let's have a means testing formula," because there will be a lot more to it before we finish as we try to understand just what we ought to be doing in fairness.

I yield the floor.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER (Mr. ROBERTS). The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, I think it is certainly appropriate, for a few moments, to speak to the issue at hand here on the floor and my support for what the Senator from Washington has chosen to do with the two issues that he brought to the Interior appropriations hearings: one on sovereign immunity, and the other on treaties involving native Americans.

I discussed these issues with him at length and certainly with native Americans of my State—four different tribes. I have spent a good number of hours discussing this issue and how it relates to their rights and how it relates to the rights of all citizens in this country.

I am extremely pleased also to have worked very closely with the Senator from Colorado, who I respect greatly for his opinions in this area and certainly his long-term knowledge about issues of native Americans because he is so proudly one of those amongst us who can claim that title and does so proudly and represents them so well in this body.

I am pleased that we are willing to take this back to hearings. It is an issue of immense proportion for both non-Indian citizens of our country and Indian citizens because of the nature that is evolving upon many of our reservations and the questions that are mounting outside of them as it relates to fairness and equity.

In my State of Idaho we have at this moment some conflict that must, I think, in the end be resolved so that there is a sense of fairness for all parties involved. There is now on both sides of this issue a lack of that sense. I hope that we can resolve some of it. It is our responsibility. We are talking about Federal law and the recognition of that law and that which has built up around it now for well over a century.

I certainly trust my colleague from Colorado to deal with it in an even-handed, straightforward way and the Senator from the State of Washington who forced this issue upon us, in the right way, to cause us to look at something that sometimes we are not willing to or we find difficult to deal with.

Yet, there are times in our country's history when it has been very easy and we look at what we intended in the past and how it has evolved into the present and whether it fits today's modernness or if there are some reasonable adjustments that can be made within law that affect people in their lives. That certainly is our responsibility.

So I thank both of my colleagues for their willingness to cooperate and work with each other and to resolve, out of respect to the Senate, a substantial conflict, an approach that I think in the end meets all of our interests in a way that serves this body and native Americans in our country well along with non-Indian citizens.

I yield back.

Mr. INOUYE addressed the Chair.

The PRESIDING OFFICER (Mr. ROBERTS). The Senator from Hawaii is recognized.

Mr. INOUYE. Mr. President, as my distinguished friend from New Mexico suggested, the matter before us is a very complex one. The history that we will be considering in the days ahead, when we debate this matter, is also a complex one filled with tragedy and filled with sadness.

It is true, as stated by my friend from Washington, that many of the tribes are not treaty tribes. But I will explain why I believe it is not so.

Mr. President, the first European came upon this land, anthropologists have suggested there were anywhere from 10 million to 50 million native Americans residing in the present 48 States. Today, the number is less than 2 million.

The history of our relationship with our first citizens is not a very happy one. Mr. President. In the early days, we looked upon them and counted upon them to help us in our wars. The record indicates that if it were not for certain tribes belonging to the Iroquois Confederacy, General Washington and his troops at Valley Forge could very well have perished. These Indians traveled hundreds of miles carrying food on their backs so that our troops would be fed.

Well, that was a long time ago, Mr. President. But this is part of our history. There was a time when Indians sent ambassadors here because they were sovereign nations, just as sovereign as Britain or France or China or Japan. And we treated them as sovereigns.

So sovereign nations conferring with other sovereign nations usually come forth with an agreement which we call treaties.

Our history shows that we entered into 800 treaties with Indian nations. Of that number, 430 never came to this floor. They are somewhere in the archives of the Senate of the United States. For one reason or another, we decided not to act upon these treaties, treaties that were signed either by the President of the United States or his designated representative. They were solemn papers, documents that started with very flowery words such as: "As long as the sun rises in the east and sets in the west, as long as the rivers flow from the mountains to the oceans, this land is yours."

It is true, as I indicated, that not all Indian nations are treaty nations, because 430 of the 800 treaties were not ratified, were not even discussed, were not debated, were not considered. But most of the remaining treaties are treaties that were signed in good faith and in fairness.

It is true that there are some that were not signed in perpetuity. But most of them had the flowery language: "As long as the sun rises in the east and sets in the west, that is yours."

Then we decided that the 370 remaining treaties may have been a mistake. And, Mr. President, this is a chapter that many of us would try to forget and it is almost difficult to believe. But we proceeded to violate provisions in every one of them.

Ours is a proud Nation. We always point to other nations and say, "You have violated a treaty. You have violated the nuclear proliferation treaty," and we convince ourselves that we always fulfill every provision in our treaties. Yes, today we do so.

But there was a time when we disregarded these solemn promises. After the treaties were signed, we decided that Indians were a nuisance. That is a harsh word to use, but we established a policy of extermination. We may not have used that word, but the actions we took were extermination.

We often hear about the trail of tears. We have had hundreds of trails of tears. For example, the Cherokees were rounded up in the Carolinas—thousands of them. They were rounded up in the summertime, and in the winter-time, with their summer attire, some in shackles, had to travel across the country to Oklahoma. It is no surprise that over half of them perished. These were the trails of tears.

Oklahoma, Mr. President—we hate to admit this—is a dumping ground. There are tribes there that cannot trace their ancestral land in Oklahoma. What are the Apaches doing in Oklahoma? What are the Seminoles doing in Oklahoma? What are the Cherokees doing in Oklahoma? They were sent there, and oftentimes sent to areas that no one wanted. Yes, if we found gold on certain land, that treaty was violated.

So, Mr. President, this is a very complex issue. After the Indian wars—and we oftentimes look back to those days with great pride; there were great soldiers, great generals, like General Custer—at the end of the Indian wars, as a result of wartime death, disease, and such, the Indian population of the land had come down to 250,000—250,000.

Yet, with this background, with this history, I think we should recall this footnote.

In all of the wars that we have been involved in since World War II of this century, native Americans have put on the uniform to participate in the defense of our freedoms, our liberties, our Constitution, our people, and our land. They have sent more men on a per capita basis than any other ethnic group.
More men from Indian reservations served in Desert Storm on a per capita basis than any other ethnic group.

In fact, we oftentimes look at that great statue of the raising of the flag at Iwo Jima on Mt. Suribachi. It should be noted that of the five men standing at the base of that flagpole, only one is an Indian. That has been the contribution of Indian men and Indian women throughout our history. They have done so notwithstanding their strange and tragic history in the back. So I think they have earned the right to say, “Let’s not break any more treaties.” Enough is enough.

Mr. President, like my distinguished friend Senator Domenici from Colorado, New Mexico, Arizona, and Alaska, I look forward to this great debate where we can finally with some definitiveness and with some depth discuss our relationship with the first Americans. In closing, I will read part of the statement of Governor Stevens of the State of Washington when he asked the tribe in the Pacific Northwest to sign the treaty of Point Elliott. The Governor said:

There will be witnesses. These witnesses will be tides. You Indians know that the tide goes out and comes in, that it never fails to go in or out. You people know that streams that flow from the mountains never cease flowing. You people know the sun rises and sets and never fails to do so. Those are my witnesses. And you Indians, your witnesses and these promises will be carried out and your promises to me and the promises to the Great Father made to you will be carried out as long as these three witnesses continue.

Mr. President, like my distinguished friend Senator Inouye from Colorado is recognized.

Mr. CAMPBELL. I thank Senator Inouye for those very thoughtful comments. Until he introduced a bill just a few years ago that established a museum of the American Indians as part of the Smithsonian—and I was a House sponsor when I was on the House side—until that happened, there was a common saying here in Washington, DC, by Indians, and the Native people. The Native people—Mr. President, the Native people saying was, “There are more dead Indians in Washington than live ones.” It was because at that time there were over 16,000 remains, mostly skulls, but other body parts, housed by the Smithsonian.

Senator DOMENICI, when he was here, I think put it in a good and proper perspective. We are dealing with a couple of sections. My primary opposition was not to the notion to look separately out from debate, but I felt it was the wrong vehicle for putting these very, very important policy changes on an appropriations bill. But Senator Domenici put it in a proper perspective. Since I didn’t, I will make a point of that, too.

Senator Inouye mentioned the number of treaties that were dealt with. It is my understanding that 374 were ratified by the U.S. Senate and 375—375—by the Administration, but not by the Indians. That is something that ought to be in a historical perspective when we talk about section 120 or 118.

Most of the things that the Indians lost in the centuries past were done through two manners: either at gunpoint or through some subterfuge. Certainly if they had known the value of Long Island, they would never have sold it. In the case of the Blacks Hills, they did not have a choice; it was at gunpoint, as many other lands were, too.

Some authorities, including Herman Viola, head of the National Archives and American Indians, has written about 14 thoughtful books on American Indians, and he says in some writings that estimates are as high as 30 million aborigine people—30 million—died in North and Central Americas between 1492 and 1992—30 million. It was not like this place wasn’t inhabited. There were complete nations.

If you go back in history and you look to the great cities of Cahokia, which disappeared 400 years before the landing of Columbus, which had 20,000 acres in cultivated crops and astronomers, doctors, artists, and every imaginable kind of people in their own generation—about 400 years before anybody landed on a boat here from any of the European countries.

The great city of Tenochtitlan, which is the modern city of Mexico City is built on top of, had thousands of years of their own history before the coming of post-Columbian people. I live about half an hour from Mesa Verde, the Cliff Dwellings. They were there before Christ walked the Earth, the people living on the mesa, planting their corn, raising their kids, praying to their Lord, passing on generation to generation. They left there almost 400 years before Columbus even got there.

So when we talk about who owes what to whom around here, I think it is very important that we remember that Senator Domenici and Senator Inouye have tried to put this in a proper perspective. They were a culture. They did not have property. They did not have jails. They did not have communicable diseases. They did not have unemployment. They did not have taxes, by the way, Mr. President. They did not have welfare, mental institutions, on top of that, had thousands of years of their own history before the coming of post-Columbian people. I live about half an hour from Mesa Verde, the Cliff Dwellings. They were there before Christ walked the Earth, the people living on the mesa, planting their corn, raising their kids, praying to their Lord, passing on generation to generation. They left there almost 400 years before Columbus even got there.

I didn’t want to get into a big history lesson here, but that is all a matter of record.

It seems to me that if Senator Domenici and Senator Inouye did anything, they tried to put this in a proper perspective. There have been many, many bills and many laws passed dealing with American Indians where they have had very little input and no voice in this body. All they are asking now is to have a voice in this body by having this kind of an interactive forum so they can speak to them, too, and not just slipped in in an appropriations bill.

In the past, there have been many devastating laws passed by this Congress which Congress decided Indians had lived on reservations long enough and they would simply say, “OK, we will set up our own chiefs. We will set up these guys over here. They belong to the tribe. We will say they are the 527 worth of heads. In the case of the Blacks Hills, they did not have a choice; it was at gunpoint, as many other lands were, too.

That is what led to the rise of the Surgeon General in the 1800’s asking the War Department to send out a request to collect body parts from American Indians. They were already dead, but the Corps, because that was OK, they sent them in and sent them in. If they were not, kill them and then send them in. The point of that whole study is a matter of historical record. It was to do one thing: Try to find fairness after fighting decades of battle, where some of their own people were lost in their battles, do you think they will be fair? Probably not.

If we decided we could not deal with the Government of France or Great Britain or any other foreign country, we would simply say, we will set up our own puppet leaders in your country and then we will sign an agreement with them and there was simply the law of the land. That is how a lot of the land disappeared.

They had none of these problems. It was not in their nature and it was not in their culture. That is all. Many, many tribes are still trying to find their center, find their way, and make a better life for themselves and their kids. It is an uphill battle all the way because this Government, by and large, has never been very sensitive of their needs.

If you remember, historically, in fact, the Bureau of Indian Affairs was not part of the Department of the Interior when it was set up. It was part of the Department of War. Do you think anybody that sets up a framework to try to find fairness after fighting decades of battle, where some of their own people were lost in their battles, do you think they will be fair? Probably not.

That is what led to the rise of the Surgeon General in the 1800’s asking the War Department to send out a request to collect body parts from American Indians. They were already dead, that is OK, dig them up and send them in. If they were not, kill them and then send them in. The point of that whole study is a matter of historical record. It was to do one thing: Try to find fairness after fighting decades of battle, where some of their own people were lost in their battles, do you think they will be fair? Probably not.

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they dumped them on the streets of Los Angeles, New York, Fresno, and all over this country with no jobs and no skills or ability to get the jobs with which they could make a living doing the things they had been taught under relocation.

That is the reason why we have such high alcoholism rates among urban Indians now, still to this day. 40 years after the relocation act.

In its infinite wisdom, this body decided, through the Termination Acts of the 1950's, they would arbitrarily say the Indians have been living around the city long enough, therefore we will not call them Indians now but terminate them as a legal body. The heck with the whole treaties, the heck with what we agreed to, our word is no good, we will terminate them. I have never understood that. It is like telling a black American you have been around the cities long enough, you are no longer black. I don’t know how they could have done that, but they did.

To this day, many of those tribes that were terminated and left in limbo, not quite in the Anglo world and certainly not in the Indian world because they were no longer legally Indians, and they trying to find their center. That is why in the last few years we have allowed more and more tribes to go through the Bureau’s procedure to be reconstituted as tribes.

I guess in closing I should say we do an awful lot here based on the law book. It seems to me we ought to do a little more based on the Good Book. You can be legally right and morally wrong. Everybody in this body knows that. I think we can put something in place that might be legally right and stand up in any court of law, but we have to ask ourselves, was that the right thing to do? Was that a fair thing to do to 2 million people without their input, without them knowing, without them having a voice? I don’t think so.

If you look at the unemployment rate on the charts that Senator Gorton showed, it was 95 percent on the reservation in Pine Ridge, SD. When you talk about a 9 percent unemployment nationwide, this country comes unglued. We think we are in a major catastrophe if we have a 9 percent unemployment. Try 40, 50, 80, 90, or 95 percent, like in Pine Ridge, SD, and all the other problems, including fetal alcohol syndrome. One out of five or six babies born is destined to lead a life in an institution because his mother drank too much because she didn’t know the difference or did not know it would hurt her unborn baby. Try to apply those statistics to the outside world.

Half of our high school kids don’t finish high school. We have kids sniffing glue, eating paint, blowing spray paint in their face, burning our their mind. They don’t know what they are doing because they have not had proper education or training. We have a suicide rate on some reservations where one out of every two girls, one out of every two, tries suicide before she is out of her teenage years, and one out of every three boys, and too many of them succeed.

That is the historical perspective that I try to put this in when I say we went the wrong way in trying to add this to an appropriations bill with no input. I am delighted and honored that so many Senators came forward and spoke to this, and at least for this year, we got it right and we are telling people that if you want to do more than a human being when we give our word. We are now in the process of dealing with fast-track for NAFTA, expanding that; we dealt with the Chemical Weapons Ban Treaty, and we are dealing with another treaty dealing with landmines. They are all going to affect millions of people. It just seems to me that if this Nation can give their word in treaties to everybody else in the world that live halfway around the planet, why can’t we give our word to the first Americans and keep it.

With that, Mr. President, I would like to get back to the amendment and clarify that. I did ask unanimous consent on the pending question that is now referred to as section 118, beginning on page 52, line 16, is that correct?

The PRESIDING OFFICER. The Senator’s amendment does propose a substitute for that language. The Senator is correct.

Mr. CAMPBELL. I am not sure. Did I ask for the yeas and nays?

Mr. GORTON. No. I think we are ready to vote on the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment by the Senator from Colorado?

If not, the question is on agreeing to amendment No. 1197 by the Senator from Colorado.

The amendment (No. 1197) was agreed to.

Mr. CAMPBELL. Mr. President, I move to reconsider the vote.

Mr. GORTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXCEPTED COMMITTEE AMENDMENT BEGINNING ON PAGE 52, LINE 16, AS AMENDED

The PRESIDING OFFICER. The question is now on the Committee amendment, amended by the amendment of the Senator from Colorado.

The excepted committee beginning on page 52, line 16, as amended, was agreed to.

Mr. CAMPBELL. Mr. President, I will move to section 120.

EXCEPTED COMMITTEE AMENDMENT BEGINNING ON PAGE 55, LINE 11

The PRESIDING OFFICER. The question before the Senate is the excepted committee amendment beginning on page 55, line 11.

The text of the excepted committee amendment is as follows:

TRIBAL PRIORITY ALLOCATION LIMITATION

Sec. 120. The receipt by an Indian Tribe of tribal priority allocations funding from the Bureau of Indian Affairs “Operation of Indian Programs” account under this Act shall—

(1) waive any claim of immunity by that Indian tribe;

(2) subject that Indian tribe to the jurisdiction of the courts of the United States, and grant the consent of the United States to the maintenance of suit and jurisdiction of such courts irrespective of the issue of tribal immunity; and

(3) grant United States district courts original jurisdiction of all civil actions brought by or against any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States.

Mr. CAMPBELL. I ask unanimous consent that the committee amendment referred to as section 120, beginning on page 55, line 11, be withdrawn.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. CAMPBELL. Mr. President, I wasn’t going to speak to that, but I thought I might make one comment. I read the language of the bill, there were so many unanswerable questions. One that came to mind was this. As I understand section 120, tribes who did not want to give up their sovereign immunity would be denied Federal funds; if they did willingly give up Federal funds, then they would not have had to give up their sovereign immunity, which seemed strange to me because the tribes that are the most destitute and therefore the most dependent on Federal help, would have been the ones who would have had to give up immunity and therefore would have been sued more, where the very few, perhaps 1 out of 100, who do have a casino and have some money, simply would have said we don’t want Federal money, we have enough; therefore, their immunity would have been intact. It seems that paradox should be the thing that we discuss in a proper forum, which is the Senate. With that, I have no further comments, Mr. President. I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Mr. President, section 120 of the bill is a section that conditioned tribal priority allocations on the abandonment of a doctrine called sovereign immunity on the part of Indian tribes. There was said during the course of the day about justice, about simple justice, about there being more important concerns than the letter of the law. With that proposition, I find myself in agreement. And the proposal with respect to sovereign immunity was aimed at just precisely that goal—simple justice.

In fact, Mr. President, there is a letter to the editor in the Washington Post today that goes under the title of ‘Simple Justice.’

I ask unanimous consent that this letter be printed in the RECORD at this point.
There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Sept. 16, 1997]

SIMPLE JUSTICE

I read with disappointment the comments of Sens. Ben Nighthorse Campbell and John McCain regarding Sen. Slade Gorton’s position to remove the sovereign immunity clause that would require Indian tribes to waive their sovereign immunity from suit before they can receive federal funds (“Keeping Our Promise to the Indians,” op-ed, Sept. 10).

Their argument misses the point.

Sen. Campbell said recently that the legislation that would provide my family access to the federal court system to seek justice for his son’s death would pass over his “dead body.” Now Sen. McCain has joined the rhetoric.

On Oct. 25, 1994, two of my sons were returning home from a school function in our farm pickup truck. When Jered, 18, and Andy, 16, were crossing an intersection on an Indian reservation, a tribal police vehicle hit their truck at a speed calculated at 68 mph. My son Jered was killed instantly, and Andy suffered serious injuries.

I then learned that my family has no recourse in the federal and state court systems, because tribes have protection for such actions under the principle of sovereign immunity. According to University of Washington law professor Ralph Johnson, sovereign immunity is based on European law—“you can’t sue the King.” There are no kings in America. Sovereign immunity is not a right held by Native Americans; it is an authority granted to them by Congress.

I was told my only avenue to seek justice would be through the tribe’s makeshift court system that operates without a constitution. Indian tribal courts have routinely shown a lack of fairness. The tribes don’t even have to allow a person to seek damages against them if they choose not to.

Sen. Gorton has written a provision that tribes receiving federal tax dollars must accept responsibility for their actions in the same court system that every other American enjoys when not on a reservation.

I then learned that my family has no recourse on a reservation. I have spent $20,000 of my own money to seek justice for his death—money that I made by working on my family’s farm. The Native Americans who have spent more than $4 million influencing politicians are the “silenced minority.” I wonder where that leaves me in the senators’ eyes.

BERNARD GAMACHE

Wapato, Wash.

Mr. GORTON. The simple justice referred to in this article is the death of an 18-year-old high school student in an automobile accident in the lower Yakima Valley in the State of Washington. That accident, according to the father of the boy and the police agency, took place when a Yakima tribal police officer ran a red light in a pursuit and broadsided the pickup being driven by the young man and killed him.

The Yakima Tribe, the employer of that police officer, cannot be sued because of the doctrine of sovereign immunity. In other words, there is no State or Federal court in which the father, the author of this letter, can seek simple justice. He is absolutely precluded by the doctrine of sovereign immunity. Now, if that police vehicle had belonged to the Yakima County sheriff’s office, a suit could have been brought against Yakima County. If it had belonged to the Washington State Patrol, the father could have brought a lawsuit against the State of Washington—but against the Yakima Tribal Council, the employer of that police officer.

The Yakima Tribal Council states that the facts are somewhat different and that perhaps the police officer was not negligent. Neither you nor I, Mr. President, nor any Member of this body can be certain of those facts. But it is for exactly that reason that we set up courts in the United States, so that there could be a neutral body to make that determination and to reward damages where a judge and a jury felt damages were due.

So when we discuss this question of tribal immunity, we aren’t dealing with an abstraction, we are dealing with a very tangible issue involving very real people and involving responsibilities that are undertaken by every other governmental corporation in the United States.

During the course of the debate over sovereign immunity, we have also heard, as one of the principal defenses, that it is created by these 367 treaties with Indian tribes. Unlike the debate on the previous question, a treaty-created right of financial support, I can’t put a display behind me here showing a treaty and what it does to deal with tribal immunity because, bluntly, there isn’t a word about sovereign immunity in any one of those 367 treaties.

The reason is not surprising. Governmental immunity from lawsuits is not a concept that traces from that relationship. It is a doctrine of English common law that you could not sue the king, a common law inherited by the United States upon our Declaration of Independence in 1776, and abandoned, in most part, by the Government of the United States, and reasserted by many governments of varying States, and through them by local governments all across the United States. One of the most recent statements of a Member of the Supreme Court on sovereign immunity is Justice Stevens, in 1991:

The doctrine of sovereign immunity is founded upon an anarchistic fix. In my opinion, all governments, Federal, State, and tribal, should generally be accountable for their illegal conduct.

And, of course, Mr. President, we never, under our system of judgment, allow the determination of whether or not a person is liable by the person accused of illegality. We use an independent court system for that determination. The Supreme Court has dealt very specifically with the question of where the authority to make that determination about Indian tribal sovereign immunity is lodged.

Chief Justice Rehnquist, in 1991, at the end of a series of cases on this subject, wrote:

Congress has always been at liberty to dispense with such tribal immunity or to limit it.

It is not a matter contained in any treaty. It is a matter that the Constitution of the United States of America lodges right here in the Congress of the United States.

I have agreed to the amendment that was just accepted because the Senator from Colorado, the Senator from Hawaii, and others have also graciously agreed that a subject that, for all practical purposes, has not previously been taken up by the Committee on Indian Affairs will in fact be taken up.

I will, in the next few days or weeks, introduce a bill on sovereign immunity. They have agreed that there will be a series of hearings in which we will hear from victims of sovereign immunity, like the author of this letter, and from many others, and hear the justification of the various tribes for the retention of this anarchistic concept. They have also agreed that we will have a markup and a vote on such a proposal in the committee.

Mr. President, the friend from New Mexico, who is not here now, who vociferously and successfully argued for the removal of this section from this bill, has said, as he just did a few moments ago, that he feels that there may be real room, in connection with this doctrine, for changes, for some removal of that tribal immunity, even if not a total abandonment of it. I find that to be a most encouraging statement. I hope he reflects on others of his own view. The particular example that he has used is one that is pretty close to home, because as long ago as 1981 when I was attorney general of the State of Washington, I was involved in a case in which the Supreme Court of the United States made the judgment that Indian tribal smoke shops were required to collect the State’s cigarette tax on the sale of cigarettes to non-Natives and to remit them to the State. It is curious that now we are debating tribal immunity, I wonder more we should pile on in the way of cigarette taxes in order to discourage smoking.

BERNARD GAMACHE

Wapato, Wash.
But in the 17 years since the Supreme Court made that decision, a decision renewed in another case in the Supreme Court of the United States just a few years ago, Indian tribes have systematically and successfully ignored the judgment of the Supreme Court of the United States and have refused to collect those cigarette taxes, and sell cheap cigarettes, often to minors, without collecting the State sales tax, and to successfully defy the Supreme Court because those smoke shops are considered tribal enterprises and the State taxing authorities can’t sue to enforce the collection of those taxes because of the doctrine of sovereign immunity. Just what justification we are going to get in these hearings for defying decisions of the Supreme Court of the United States and selling cheap cigarettes in the year 1997 and 1998 I am not sure about. I am going to be very interested in listening to that argument. We are talking here about the fairness here. We are talking about taxes that support the schools to which members of the tribe go. We are talking about a tax system that creates fair competition between sellers who hold that tribal immunity and those who do not. And in a third area, we need to examine whether or not the ordinary forms of contract law ought to allow the enforcement of contracts, as against a claim of tribal immunity preventing a determination as to whether a contract has been violated or not. Those are three areas. I don’t know that they are necessarily exclusive, and probably the considerations in each one of them may be different.

Should States be allowed to enforce the collection of taxes that the Supreme Court says they have lawfully imposed? Should persons alleging violations of contract be able to go into a court on a fair and equitable determination of whether a contract has been violated? Should the victim of negligence, or even an intentional harm in an automobile accident, or an assault, or the like, be able to seek redress of his or her State, or his or her Federal system, against an Indian tribe under pretty much the same circumstances in which they can seek that redress against any other governmental entity in the United States?

The Supreme Court, Mr. President, has said the buck stops here. It is up to us to make that decision. We have not even talked about it for 20, 30, or 40 years. I think it is a major step forward that we will in fact talk about it. I suspect that it will still be a controversial issue, though it may be that the Senator from New Mexico has come up with a way for us to say, “Well, perhaps we are not going to go all the way; perhaps we will try to deal with areas which are really quite open and shut, and see whether or not we can come up with a way to say, whether or not it does undercut any kind of tribal right of self-determination.”

That offer, as well as the generous statements from the Senator from Hawaii, and the Senator from Colorado, I greatly welcome. And I think we can deal with this in an orderly fashion of committee hearings and committee action.

I now think perhaps for the first time we have some hope that we may not only be able to talk about the issue but to come to some kind of an accommodation in which we meet somewhere in the middle of the road—hopefully we will not get on the wrong track and see whether or not we can’t move forward on this.

So, I agree with the amendment of the Senator from Colorado which has just been agreed to. I thank him for his agreement to move forward on an issue on which he feels strongly, just as I do. But that, of course, is the way in which we deal with controversial issues, and I look forward to the next round.

Mr. President, I think we have exhausted this. With respect to the bill as a whole, we will return I believe to the debate over the various amendments on the National Endowment for the Arts. The majority leader informs me that he in the strongest possible terms wishes to complete all action on this bill by adjournment tomorrow. Once Members who wish to speak to the National Endowment for the Arts, or any other issue, come to the floor and do so, we will have a further opportunity this evening.

There is an amendment on forest roads to be proposed by Senator BRYAN of Nevada, which I understand will be proposed early tomorrow, which will be highly controversial. And this will require a vote. The Senator from Arkansas, Mr. BUMPERS, and the other Senator from Nevada, Mr. REID, may well have settled the controversy involving them, and others.

So I am not certain on the Bryan amendment. Of the various amendments on the National Endowment for the Arts, that there are any others that will require rollcall votes. If there are, I urge Senators, or their staffs, to notify us and come to the floor and discuss them.

We need to pass this bill. We need to get it into a conference committee. There are many controversial differences with the House bill.

With that, Mr. President, and the request of authority, the way to save something tonight to say I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE NATIONAL ENDOWMENT FOR THE ARTS

Mr. REED. Mr. President, last November, the people of Rhode Island gave me the great honor of succeeding one of this Chamber’s true giants: Senator Claiborne Pell. Throughout his years of service, Senator Pell committed himself to increasing access to education and, fittingly, his name has become synonymous with the fight to open the doors of higher education to all of our Nation’s citizens, regardless of income.

Senator Pell also dedicated himself to increasing access to the arts for all Americans, regardless of an individual’s or a community’s wealth. He recognized the power of the arts to inspire people of all ages, through national and local exhibitions as well as arts education. With his wise and steadfast leadership, Congress made a commitment to advancing these aims, creating a National Endowment for the Arts.

I am proud to follow in Senator Pell’s footsteps in supporting the NEA and a strong Federal commitment to the arts. Across the country and in my home State of Rhode Island, the arts enhance our culture and strengthen our economy.

The events of recent years in Rhode Island’s capital city of Providence are a testament to the power of the arts. The last half decade has seen the revitalization of Providence’s downtown area, which has begun with the major birth of Waterplace Park, which uses architecture to take advantage of the Woonasquatucket and Providence Rivers’ natural beauty. This summer, with NEA support, the WaterFire exhibition was introduced to the park. In the few short months since its installation, this artistic display has already encouraged thousands of Rhode Islanders to rediscover Providence’s treasures.

The arts have also contributed to Providence’s revival in other ways. Institutions like the recently renovated Providence Performance Arts Center and Trinity Repertory Company, both of which receive NEA support, provide opportunities to residents with opportunities to see well-renown and innovative theatrical works. In addition, the passage of new tax incentives for artists residing in downtown Providence has attracted a vibrant and increasingly active artistic community to the city. Taken together, these developments led USA Today to name Providence a “Renaissance City” in 1996.

The Federal investment in the NEA is minimal. The $100 million this bill would provide for would be the smallest Federal commitment to date. I urge the chairman and ranking member of the subcommittee, represents less than 40 cents for each of our Nation’s citizens.

But with this tiny investment, the NEA does great things, offering our Nation’s citizens increased access to all forms of the arts. In my State, the NEA supports not only theatrical productions, but also the work of the Children’s Museum of Rhode Island, the power of the arts given by the Rhode Island Philharmonic Orchestra and the interactive music program that Rhode Island Hospital offers to its patients. In my hometown of Cranston, the NEA...
supports the annual Labor and Ethnic Heritage Festival, which brings people of diverse backgrounds together to celebrate and learn about each others’ traditions and cultures.

These programs reach a wide range of Rhode Islanders and are enjoyed by even those who choose not to participate in these events benefit from NEA support and our State’s vibrant arts communities. There is a close relationship between the arts in Rhode Island and economic growth.

Working closely with the NEA, the Rhode Island State Council on the Arts supports many arts organizations, social service organizations conducting arts programs, and arts educators. One of the Rhode Island Council’s funding categories, which supports 26 of the State’s largest arts organizations, is known as general operating support. In 1995-96, the council’s grants in this category totaled $355,000, with an average grant size of $10,000.

For this investment of $355,000, the State of Rhode Island saw an enormous return on its investment. General operating support organizations directly contributed more than $24 million into the Rhode Island economy. More than 1.1 million people attended these organizations’ programs last year, further spurring the economy. Using modest Department of Commerce multipliers, these figures suggest that the activities of the general operating support organizations alone contributed a total of more than $97 million to Rhode Island’s economy last year. The figures for all arts organizations would be even greater.

These impressive findings are repeated on a national scale. Recent studies have shown that the national nonprofit arts industry generates some $36.8 billion annually in economic activity; supports 1.3 million jobs; and produces $780 million in local government tax revenue and $6 billion in tax revenue. For each dollar the NEA invests in communities, there is a twentyfold return in jobs, services, and contracts. Without question, this is a wise investment of our resources.

We recognize the importance of national leadership in the arts, which only a strong, sufficiently funded National Endowment can provide. As my colleague from Utah, Mr. Bennett, noted yesterday, the NEA is recognized as the highest of man’s creative impulses. The arts can put into tangible form the highest of man’s creative ideas, so that they may become permanently memorable.

Today, I wish to echo Senator Pell’s wise counsel. I urge my colleagues to support the NEA at the funding level requested by the subcommittee and to restore a strong Federal commitment to the arts.

VANISHING TREASURES

Mr. DOMENICI. Mr. President, I would like to take a moment to bring an issue to the Senate’s attention related to the National Park Service and it’s new initiative called Vanishing Treasures.

In a number of park units throughout the Southwest, the Park Service is responsible for maintaining and interpreting numerous ruins and historic structures, some that date back over 1,000 years.

One example of the wonderful ruins that exist in our National Parks is the Chetro Ketl kiva found in Chaco Canyon in New Mexico; a fascinating structure documented for its architectural skills of the ancient Anasazi culture.

Many of these structures have become unstable and are constantly being degraded, primarily by the effects of the harsh desert climate. Furthermore, the almost artistic skill required in the stabilization methods that are necessary to preserve these structures is being lost because of the emphasis on other programs within the Park Service.

The Vanishing Treasures initiative will provide a 10-year program to stabilize ruins and to bring these ruins to the point where they can be preserved by routine maintenance activities. Additionally, the initiative will place an emphasis on the training of younger employees, both permanent and seasonal, in the skills needed to perform this needed work.

In all, over 2,000 prehistoric and historic structures in 41 Park Service units, and countless numbers of future visitors will benefit from the work performed under this initiative.

The bill before us provides $1.5 million for this program, which is $0.5 million more than provided by the House, and $2 million less than requested by the administration.

I hope that the chairman will work with us at the State level to make sure the State level is at least maintained in conference, and I look forward to working with him to explore other opportunities to see that this initiative has sufficient resources to do this important work.

I ask unanimous consent that additional material be printed in the RECORD.

There being no objection, the material

VANISHING TREASURES INITIATIVE

Vanishing Treasures ($3,500,000; 18 FTE): The initiative proposed here would enable the NPS to reduce threats to ancient prehistoric ruins and historic structures that have grown to serious proportions in recent decades. “Vanishing Treasures” will improve the preservation of over 2,000 prehistoric and historic ruins in 41 parks in the arid west, all located within the Intermountain Field Area of Park Service. The half of these structures, the remains left by ancient American Indian societies such as the Anasazi, their historic descendants, and later pioneers, are in less than good condition. About 60 percent of these structures are being impacted severely or substantially, mainly by weathering and erosion. The severely impacted structures are at risk of collapse in the near future. Others are deteriorating at a bit less quickly, but with continued deferred maintenance this process will accelerate. Also of special concern is the poor documentation of the remaining 40 percent of which are not well recorded and are poorly known.

An estimated 20 million visitors annually come to see these prehistoric and historic ruins and to learn about the rich historic cultures that created them. This visitation contributes over $1.6 billion to the economies of the States where the parks are located, helping to create over 35,000 jobs there. If the NPS is unable to maintain these structures, they will be lost. There is no Service-wide base funding for this program in FY 1997.

“Vanishing Treasures” is proposed as a 10-year program to bring NPS capability and the prehistoric and historic structures to a condition in which they will be preserved by routine preservation maintenance activities.

The initiative includes: immediate emergency actions to be carried out in the first year; documentation, planning and management of projects to be carried out over the 10-year period of the initiative; a focus on skilled maintenance expert development and training; and provisions for appropriate expertise from other disciplines to make the program successful. Projects will be carried out by parks or centers, depending upon the nature of each project.

Following is a summary of the four components of the Vanishing Treasures program:

Emergency Needs: Wind, rain, ice, snow, visitor use, site looters and vandals, insects, birds, rodents, and other forces wear down, break up, and deteriorate prehistoric structures unless counteracted. Lack of such steps in recent decades has placed some structures in grave danger. In FY 1996, $2,045 million will fund the most acute emergency projects; where collapse and permanent loss of irreplaceable resources is imminent. Approximately 18 to 24 projects will be undertaken to meet most of the acute emergency need. A few examples of types of projects to be undertaken include:

- Wupatki and Walnut Canyon National Monuments: These units include 202 sites that have standing prehistoric architecture, including large interior rooms as well as smaller sites whose structural conditions have been identified as threatened with imminent loss. Only one position is currently dedicated to this program.

- Chetro Ketl, Chaco Culture National Historical Park: Large elevated circular kivas are a hallmark of Classic Bonito Phase great
house architectural design. Among many, only Kiva G in the Chetro Ketl ruin has been extensively excavated. Kiva G is a series of eight superimposed, independently constructed subkivas, representing at least 18 separate prehistoric construction episodes and elevated 35 feet in the central building mass of the ruin. A support system of masonry reinforced with some wood beams, iron rods, and steel beams installed more than 60 years ago to preserve the site have rusted, twisted, bowed, fractured, and rotted so that stresses are now transferred from the masonry walls to the system was intended to protect. The area is hazardous to the very workers who preserve it, says Dabney Morse, chief, America's National Historic Park Service officials.

The $2 million will be available to all 375 parks and historic sites in the country, Rogers says, while the Vanishing Treasures funds are just for the 31 parks in the West.

To generate public sympathy and federal funds to preserve these ruins, Ford and other national park employees earlier this year launched a drive to secure $3.5 million from Congress. But Congress, scheduled to reconvene this week, is poised to provide less than a third of that request.

If approved, the money would begin a 10-year project called the “Vanishing Treasures Initiative” to improve and protect more than 2,000 prehistoric ruins at 30 national parks in New Mexico, Arizona, Colorado, Texas, Utah and Wyoming.

The money would also set up a mentor program where experienced Native American preservationists would train another generation to do the work, Ford says.

**GONE WITH THE WIND**

As Ford leans into the wind while balanced on the rim of a large round kiva, she points to a bulge in the sandstone masonry work below her feet. The bulge has been caused by underground moisture that has weakened the ancient mud mortar between carefully laid rock. Natural pressure did the rest, she says.

Mrs. Sherris, facility manager at Aztec, N.M., ancient rock walls are tilting and some have fallen. Some of the country’s best-preserved and hand-plastered structures have given way to periodic rains that leak through deteriorating room stone structures and kivas, Ford says. Burrying these ruins protects them from the ravages of sand, wind and sun.

“We haven’t been taking care of these things,” she says. “There are reasons, and they are mostly fiscal.”

The situation at Chaco is not unique. At Aztec Ruins in Aztec, N.M., ancient rock walls are tilting and some have fallen. Some of the country’s best-preserved and hand-plastered structures have given way to periodic rains that leak through deteriorating chamber roofs, says Barry Cooper, Aztec Ruins’ superintendent.

Mike Sherris, facility manager at Aztec, was among the three people who launched the preservation program. “They just were not well-funded for many years,” Sherris says of preservation work at Aztec and other monuments. “We’re going to lose sites here if we don’t maintain them.”

A third major ruin in New Mexico also has been deteriorating. Mike Schneegas, facility manager at Salinas Pueblo National Monument, near Mountainair, also helped initiate the program. The preservation needs at Salinas “were much greater than we thought,” he says. With just three or four seasonal employees to do the repair work, “we just can’t keep up.”

Erosion is the biggest problem at Salinas and threatens the many towering rock walls, he says. Moisture from the soil creeps into the mud mortar and weakens it. A little bit of preservation work goes a long way and can save money in the long run, he says. Repairing a deteriorating wall is much cheaper than rebuilding one.

**FINDING A MIRACI**

Like other federal agencies in recent years, the National Park Service suffered deep budget cuts and preservation funds were lost, Ford says.

“We’ve downsized and it’s been for the good,” she says, but “money is tight” and budgets focus on simply keeping the parks open.

The House and Senate, in separate measures in July, proposed $1 million and $1.5 million respectively for the Vanishing Treasures program.

In addition, another $2 million has been proposed for “stabilization” work across the country, only a portion of which would be used by the western parks, says Jerry Rogers, superintendent of the Southwest Office of the Park Service.

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**FINDING A MIRACI**

Like other federal agencies in recent years, the National Park Service suffered
section of the Everglades National Park acquisitions in Everglades National Park, the bill contains language allowing the Secretary to use these funds to purchase lands elsewhere in the south Florida ecosystem. Is that correct?

Mr. GORTON. The Senator from Florida is correct. The legislation before us today allows the Secretary to use this funding to assist the State of Florida in acquiring land in Stormwater Treatment Area 1-East. Should the determination be made appropriately and deemed necessary by the Secretary.

Mr. GRAHAM. I join my colleague from Florida in thanking the chairman for his hard work on behalf of the Everglades. As my friend from Washington is aware, the Federal Government—under an agreement enshrined in the Everglades Forever Act of the State of Florida—is committed to purchase land for Stormwater Treatment Area 1-East. This land will be used to create a buffer marsh bordering on the Everglades agricultural area to help restore water quality. As I understand it, nothing in the bill before us today prevents the Secretary from using a portion of the Everglades National Park land acquisition funds to assist in STA-1E land acquisitions. Is that correct?

Mr. GORTON. The Senator is correct.

The Secretary may use the funding in this provision to improve and restore the hydrological function of the Everglades watershed. Nothing here prevents a determination by the Secretary from providing park acquisition funding to assist the State of Florida in the purchase of land for the project you described.

Mr. GRAHAM. I appreciate the chairman’s comments and assistance.

Mr. MACK. I thank the chairman for his work on behalf of Florida’s environment and for his help here today. I yield the floor.

Mr. GORTON. Mr. President, this amendment has been cleared by the managers on both sides and is non-controversial. I recommend its adoption.

Mr. REID. I would say these amendments have been cleared on this side, on behalf of Senator Byrd.

I urge the adoption of this amendment.

The PRESIDING OFFICER (Mr. GRAHAM). If there is no objection, the amendment is agreed to.

The amendment (No. 1200) was agreed to.

AMENDMENT NO. 1201

(Purpose: To permit the Virgin Islands to issue parity bonds in lieu of priority bonds)

Mr. Gorton. Mr. President, I send an amendment to the desk sponsored by the junior Senator from Alaska. I ask unanimous consent that the pending committee amendment be set aside and we proceed to the consideration of the Murkowski amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. Gorton. Mr. President, I send the amendment (No. 1200) to the desk for myself and Senator Byrd.

This is a technical amendment regarding the Bureau of Land Management’s Forest Ecosystem Health and Recovery Revolving Fund. The Recovery Fund is used for the planning, preparing and monitoring of salvage timber sales and forest ecosystem health and recovery activities. The amendment clarifies that the Federal share of any receipts derived from treatment funded by the account shall be deposited back into the Recovery Fund. A percentage of the receipts that are collected from salvage timber sales are returned to the States.

That applies to only the Federal share of receipts.

I ask unanimous consent that the pending committee amendment be set aside and this amendment be considered.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. Gor- ton], for himself and Mr. Byrd proposes an amendment numbered 1202.

Mr. Gorton. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 6, line 20, strike “Any” and insert in lieu thereof “The Federal share of”.

Mr. Gorton. Mr. President, the amendment has been agreed to by both sides.

The PRESIDING OFFICER. If there is no objection, the amendment is agreed to.

The amendment (No. 1202) was agreed to.

Mr. REID. Mr. President, I move to reconsider the vote.

Mr. Gorton. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1203

(Purpose: Technical amendment clarifying provision allowing TPA funds to be used for repair and replacement of school facilities)

Mr. Gorton. Mr. President, I send a further amendment to the desk sponsored by myself and Senator Byrd. It is another technical amendment clarifying the provision allowing TPA funds to be used for repair and replacement of school facilities.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. Gorton], for himself and Mr. Byrd, proposes an amendment numbered 1203.
Mr. GORTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 32, beginning with the colon on line 13, strike all thereafter through “funds” on line 18 and insert in lieu thereof the following: “Provided further, That tribes may use Tribal Priority Allocations funds for the replacement and repair of school facilities which are in compliance with 25 U.S.C. 2006(a) so long as such replacement or repair is approved by the Secretary and completed with non-Federal tribal and/or tribal priority allocations funds”.

Mr. GORTON. Mr. President, the amendment is technical. In response to the growing backlog of unmet need for replacement and repair of BIA schools, the committee recommended that tribes be allowed to use their Tribal Priority Allocations funds for replacement and repair of schools if they wish. The technical amendment we are recommending today would clarify that, if a Tribe chooses to use its TPA funds for the improvement, repair, or replacement of a school, that work must be preapproved by the Secretary of the Interior. In addition, future work must be completed with TPA or non-Federal Tribal Priority Allocations funds for replacement and repair of a school, that work must be preapproved by the Secretary of the Interior. In addition, future work must be completed with TPA or non-Federal Tribal Priority Allocations funds, as noted after the committee included the original language that, absent such conditions, it cannot currently meet the needs as they exist now. We are attempting to give Tribes some options; however, we do not wish to simply add to the need.

The PRESIDING OFFICER. If there is no objection, the amendment is agreed to.

The amendment (No. 1203) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GORTON. I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. ABRAHAM. Mr. President, I would like to spend a few moments discussing the issues pertaining to the National Endowment for the Arts. There are a number of amendments which are either already filed at desk or will be filed between now and, I gather, tomorrow. I will be further debate on this tomorrow as well. But I wanted to add additional comments, as well as to reiterate some of the points I made yesterday, both in support of the amendment which I have filed, as well as the general issues that have been raised by a number of the others who have spoken with regard to the NEA.

Again, I would like to begin as yesterday by pointing out that, like many of the people here in the Senate, I am a strong proponent of the arts; a supporter. In our State we have a number of outstanding institutions too numerous to mention without forgetting important ones. I will just say in our State we make a major commitment and investment in arts activities. There are problems, though, as have been discussed at great length in the last day and a half, with the way the National Endowment for the Arts has functioned. The criticism of the functioning of individuals, but I do think the results have been ones that have raised concerns. They have been concerns I have had since I came to the Senate in 1966.

The principal concern I have is that the way we have proceeded has sort of established an ongoing debate which, on the one hand, has people arguing that the funding of specific types of, either arts institutions or artists, has meant that, in effect, tax dollars have been used for unacceptable or, in some cases it is argued, obscene activity. On the other hand, we hear from those who seek to be recipients of NEA grants, the argument that every time we add more controls on the way these dollars are distributed, we are in effect performing a type of censorship on art and creativity in our country.

My fear is that ultimately this leads us in a direction where there is a no-win outcome. Everybody loses. I met and discussed this with Jane Alexander. We have talked. I have outlined to her my concern that all it will take is one or two or maybe three more objectionable grants and the whole thing will get into an immediate cessation of support for the National Endowment or for any concept like it. In my State, that would be a bit of a problem because a lot of the institutions, I think, need lead time before we would totally cease support.

Also, I think if we continue this debate we are really, in many ways, undermining the arts themselves. Because every time we have national focus on the support of artistic activity in this country, I think if anything it causes people not only to want to see fewer tax dollars supporting the NEA, and more strings attached to those tax dollars, but I think it diminishes the overall level of interest in and positive feelings toward arts activities. I also am concerned, and have expressed this before, about the way the NEA makes its decisions. Because, as we have seen time and time again, the vast majority of funding is provided by the Senate. The Senate then crafts the NEA to allow it to move to a situation where it was privately supported. As I said earlier, it be phased out over 3 years. That will give organizations who are looking to receive support, lead time to mark long range plans. It will give the NEA time to build support in the private sector for its continuance.

As a consequence, I am offering an amendment that would set in motion the first year of that 3-year plan, by reducing the budget for the NEA accordingly, by approximately one-third. At the same time, it would provide help. Consequently, my amendment would provide the NEA with the authorization to go forward and use some of its dollars to begin the fundraising activities needed for it to be an independent entity.

In addition, it would be my plan, if my amendment is agreed to, to subsequently introduce a sense-of-the-Senate resolution which would encapsulate the full privatization plan that I contemplate. It would also be my plan to work with other interested Members of the Senate to provide additional tools that would make it more feasible for the NEA to function in a private sense.
For example, ideas which we have looked at already would be the creation of a special postage stamp which would be marketed and sold at a greater amount than 32 cents, with the proceeds being made available to the private entity.

Other ideas which have been discussed would include such things as a tax checkoff on the tax form through which people could direct a small number of dollars they would otherwise be paying to the NEA. So, in fact, the people who especially wanted to support it would be given this opportunity. There are a variety of other ways that we can do it.

The point is, I believe it is very feasible to generate private-level support at least as great as we are providing currently, at approximately $100 million a year. I say that for the following reasons. First of all, we already know that in this country the arts are supported on an annual basis by approximately half a billion of activity and support of this type.

In addition, we have specific institutions, arts institutions, in this country, such entities as the Lincoln Center, the Metropolitan Museum of Art and many others that have an operating budget considerably greater than the National Endowment for the Arts. So it is certainly the case that support is out there across this country to provide the kind of resources necessary for the entity to function privately and absolutely would be the case if such funds were available if we provided some of the tools that I mentioned earlier.

In addition, as I have indicated in previous speeches on this, I think there are a number of other mechanisms that could be available to the National Endowment for the Arts if it became a private entity to raise funds. They range from fundraising events, where the artists, the very artists, in fact, who come and knock on our doors urging us to support the entity, could produce and support fundraising activities on behalf of that private entity.

My belief is that such events, whether they are simple dinners or they are concerts and performances of that sort, could generate enormous amounts of money. In fact, I was noting the other day that one of the artists who has been down to see Members of Congress, Garth Brooks, just had a concert in Central Park, NY. Approximately 700,000 people attended that concert. It was broadcast on the HBO network. I am sure a huge amount of revenue was generated by the event. Those are the kinds of things I would think artists would be available to do in support of the NEA, especially those artists who have come to us and have said, this is a worthwhile project that ought to be supported.

I also believe there could be support generated for special events. As I pointed out in the Labor Committee when I brought a similar amendment before that committee a couple of years ago, each year during the various televised awards ceremonies celebrating the arts, such as the Oscars, the Emmys, the Tonys, the country and western musical award shows, and so on, we hear a great deal of support expressed for the NEA by the very performers and individuals who give away awards. Those programs are literally built around the appearance of these pro-NEA entertainers, and it is my suspicion that those programs generate extraordinarily substantial profits for the networks that broadcast them. Indeed, I believe just a couple of years ago it was estimated that the Academy Awards show drew a worldwide audience of over 500 million people.

Certainly, that is the type of programming that could be turned into a fundraising opportunity for a private entity supporting the arts. Indeed, as I pointed out a couple of years ago, only 5 percent of the audience that watched those shows, however, who watched them through a pay-per-view broadcast of that type of program. It would generate more revenue, given the rates that one charges for those pay-per-view shows, more revenue than the NEA's current budget.

Again, all these are opportunities that I think exist out there, and I believe we should move in the direction of providing the NEA with the chance to benefit from that type of support.

The point is, I believe it is very feasible to generate private-level support for that cause, to similar types of collaborative efforts of artists ranging from the kind of support we saw a few years ago for USA for Africa when the "We Are the World" recording produced approximately $60 million of support for that cause, to similar types of collaboration, or the possibility of reimbursements for commercially successful grants and events which the NEA provides the seed money for.

In short, Mr. President, a variety of opportunities, I think, exist, and I think, therefore, it is feasible for the private entity to at least generate the type of support that we provide annually and, in my judgment, probably considerably more support as if it truly was, as I believe it can be, a national level organization.

Another question, of course, that also has been raised by my amendment is, are there other important American treasures—perhaps arts related, perhaps not—where considering funding? So what my amendment does, in addition to beginning the process of privatization of the NEA, is to expend the dollars which would be reduced from the NEA's budget on the preservation of American treasures, the restoration of national treasures.

Let me outline the specifics.

First of all, $8 million for the restoration of the Star Spangled Banner. The cost to transfer the flag to begin its restoration will be approximately $1 million alone. It was recently reported in the media that the total cost could run as high as $15 million. Currently, the Smithsonian's calculating this amount will not confirm this number, but the $8 million we would earmark in my amendment represents a responsible amount to begin the preservation effort of the Star Spangled Banner itself, the actual flag which prompted Francis Scott Key to write America's National Anthem.

The amendment would also provide $8 million for the preservation of Presidential papers. Our former Presidents were prolific writers, Mr. President. Their works survive to this date. Private enterprises would pay over 40 years to preserve the works of Jefferson, Adams, Madison, Franklin, and other Founding Fathers, and they will not survive another two centuries.

The National Archives has focused its resources on preserving modern electronic records of local and State archives. The National Historic Publications and Records Commission once provided about one-third of the funding for the preservation of the Presidents' materials but has announced that the projects will now have to contend with whatever is left after it has satisfied the local archives proposal.

The fact is the preservation of Presidential papers is now at some risk. As I mentioned earlier, $8 million of these earmarked funds would go to maintaining active support adequate to maintain our Presidents' documents.

Two million dollars in this amendment is directed at the restoration of Ellis Island, the site of the arrival of so many people in the United States. On islands 2 and 3, the old hospital ward, the crematorium and housing for immigrants are in desperate condition and appear in the same condition as when they were abandoned by the U.S. Coast Guard in 1954.

The National Trust for Historic Preservation has listed these buildings as 1 of the 11 most endangered historic sites in America. The $2 million amendment would earmark $5 million of these earmarked funds would go toward helping to address a serious problem at Mount Rushmore, to maintain that facility in good condition, as well as preservation of the manuscripts and original works of great American composers whose compositions which may not survive another two centuries, like the Presidents' papers, inadequately supported.

In short, my amendment does several things. It sets us on the course to privatize the National Endowment for the Arts as opposed to an immediate abolition, a 3-year timeframe in which we would slowly give that entity the opportunity to move in the direction of privatization.

Second, it would protect and provide support to protect key national treasures—the Star Spangled Banner, our Presidential papers, the manuscripts and original works of great American artists, the very artists who appear in the same condition as when they were abandoned by the U.S. Coast Guard in 1954.
Finally, I think it would help end the division that continues to exist at all levels with respect to the National Endowment for the Arts. By making the Endowment a private entity, we will take this issue, this very divisive issue, out of the Congress, give the arts the opportunity to act and give this entity the opportunity to act in an independent fashion without a lot of strings and a lot of limitations and allow us, as a consequence, I think, to move on in other directions.

We would still have a national entity. We would still have that entity supporting worthwhile projects as it deemed, but we would no longer have the ongoing battle I have outlined between the argument on the one hand that we are too often using taxpayers' dollars for objectionable activities and the argument on the other that every dollar for objectionable activities and that we are too often using taxpayers' dollars to support or opposition to the nomination.

(3) DESIGNATION.—The American Heritage Rivers Initiative may be implemented only with respect to rivers that are designated as American Heritage Rivers by Act of Congress.

(4) DEFINITION OF RIVER COMMUNITY.—For the purposes of the American Heritage Rivers Initiative, as used in Executive Order 13061, the term "river community" shall include all persons that own property, reside, or regularly conduct business within 10 miles of the river.

Mr. HUTCHINSON. Mr. President, this amendment supports one of our most fundamental rights, the right of property ownership. This fundamental right, I believe, is threatened by an Executive order signed by the President on September 11 designating the American Heritage Rivers Initiative. This initiative is intended "to help communities and protect the river resources in a way that integrates natural resource protection, economic development, and the preservation of historic and cultural values."

Who could be opposed to that? That, I think, is a goal that all of us share. However, in the eyes of those who live along these historic rivers, this initiative is just another Washington power grab for valuable river front property. It is another Washington intrusion under the guise of a program that has never—has never—been authorized or appropriated.

This Executive order allows for eight Cabinet Departments—the Department of Defense, Justice, Transportation, Agriculture, Commerce, Housing and Urban Development, Interior, and Energy—along with four Government agencies—the EPA, the NEA, the NEH, and the Advisory Council on Historic Preservation—to decide what happens to America's rivers. I ask you, what does a Washington bureaucrat know about the Arkansas River or the Rio Grande? Any or the 16 leading candidates to be designated as American heritage rivers?

I have listened to my constituents, and they want vibrant river front communities that are reflective of the heritage of the community in which they live and work. They want a community-led process that will make the right decisions for their particular community, not a federally dominated process that could dictate to property owners how they can use their land.

The amendment that I offer allows for the river front renaissance that so many of our communities desperately need, while offering protections for the average property owner and members of the community that must live with the decisions that are made.

My amendment provides the necessary safeguards for property owners and communities, while at the same time allowing these river communities to benefit from the Federal funds that are available to improve their polluted or damaged river areas and spur economic development.

Mr. HUTCHINSON. Mr. President, I think this is an important issue. It is an issue that many of my constituents have been energized about. It has just recently come onto the scene, in one sense, because the Executive order was issued September 11, and the President is seeking to implement this. So I think it is appropriate for us on this Interior appropriations bill to provide some safeguards and to ensure that while the initiative moves forward, that the right of the property owners along these rivers is protected; that there is a process that is in place to ensure that those who are most vitally affected by the initiative will have input in the process, will have some input, have some say as to whether or not that river should be so designated.

While it ensures the environmental protections of the Safe Drinking Water Act and the Clean Water Act, it will also ensure that these communities, many
times with damaged rivers and polluted waters, will have access to vital Federal funds to ensure that those communities can be reinvigorated.

So I ask my colleagues to join me in support of this amendment as a safeguard for private property and for America’s communities.

Thank you, Mr. President. I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I share many of the sentiments expressed by my colleague from Arkansas. I believe that he has brought up an important issue, an issue that should not be decided simply by fiat from the President and the President’s administration, but one that ought to be carefully considered here by the Congress.

Without having read every word of his amendment, I am inclined to tell him that I agree with it. I must tell him at the same time, in this relatively empty Senate Chamber, as he knows, his amendment will be quite controversial. I am certain it will require a rollcall. For that reason, I am particularly happy that he did bring it up tonight so that other Members can consider its provisions so that it can be debated further tomorrow. But while I had said not too long ago that I did not know of a number of other amendments that will require a rollcall, I will have to amend that statement and say that I think that the amendment of the Senator from Arkansas will require a rollcall.

I do hope that he and others will speak on it tomorrow. I just say that I think the statement he has made is correct, that this is an issue in which the Congress should be involved.

With that, Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BROWNBACK). Without objection, it is so ordered.

THEMES FOR BANKRUPTCY REFORM IN THE 105TH CONGRESS

Mr. GRASSLEY. Mr. President, I rise today to address an important topic which will be coming before the Senate in the near future. In 1991, Congress created the Bankruptcy Review Commission and charged this Commission with developing suggestions for changing the bankruptcy code. As the ranking member of the subcommittee with jurisdiction over bankruptcy at that time, I assisted in creating the Commission. When I became the Chairman of the subcommittee after the 1994 elections, I fought to ensure that the Commission was funded. The Commission’s report is due on October 20, 1997.

I will have much to say at that time about the Bankruptcy Review Commission and the way in which it was conducted. As some of my colleagues may know, there have been some troubling instances that have come to my attention regarding the way the Commission has operated.

For now, however, I simply want to outline my views on the substance of bankruptcy reform.

I believe that the current bankruptcy system needs to be fixed in several ways. Under current law, it is just too easy to declare bankruptcy. And it is too easy for people who declare bankruptcy to avoid repaying their debts when they have the ability to do so. Of course, decades of irresponsible and runaway spending by Washington has set a bad example for the American people, so Congress bears some of the responsibility for this new attitude of deficit living that seems to push many Americans into bankruptcy. With millions of personal bankruptcies in this country, American businesses are losing millions of dollars a year to bankruptcy. And this results in higher prices for homes, cars and other consumer goods for those Americans who really need the extraordinary protections of the bankruptcy code. At the same time, I’m very aware that creditors can sometimes use abusive tactics. In fact, Sears was recently forced to pay a multi-million dollar settlement for engaging in abusive activity. So, in my opinion, bankruptcy reform which will help creditors get what they are owed should also include reforms to enhance protections for debtors from harsh or abusive conduct.

Section 707(b) is one example of a situation where the bankruptcy code sends the wrong signal to the American people and may encourage irresponsible conduct. Section 707(b) allows a bankruptcy judge to dismiss a chapter 7 case only to prevent substantial abuse. In other words, Section 707(b) says that it’s OK to abuse the bankruptcy system somewhat, so long as you don’t abuse it so much that the abuse becomes substantial. I think we in Congress ought to change this to say that debtors can’t abuse the bankruptcy system at all. The consideration of Section 707(b) will be very important when Congress considers reforms in the context of consumer bankruptcy. I also believe that chapter 11 of the bankruptcy code needs fundamental reform. In hearings before my subcommittee on how bankruptcy disrupts funding for education, I learned that many businesses which attempt to reorganize flounder for too long, thereby deleting the assets of the company. That’s less money for creditors and employees of the company. I think that this should change. The Bankruptcy Review Commission has adopted a proposal to speed things up for small businesses in chapter 11 cases. I look forward to supporting that proposal in the next session of Congress.

I believe that Congress needs to look long and hard at the way attorneys are compensated in bankruptcy. It seems to me, from the reports I receive from around the country, that attorneys are using up the assets of the bankruptcy estate without really contributing very much. And attorney’s fees are paid ahead of—and at the expense of—school workers and other people entitled to child support. I think that’s something we need to change. I’m a little disappointed that the Review Commission did not really get into this issue, but it is something that I will be pursuing in the bankruptcy reform bill.

Another area which needs attention is the subject of the economy as a whole in bankruptcy. With the increase in international trade, many complex questions arise when a multinational company declares bankruptcy. Right now, international insolvency is an issue where there isn’t very much international cooperation. The United Nations recently approved a model law on international insolvency and bankruptcy and I look forward to considering that model law in the coming year. In the United States, we put a great deal of emphasis on protecting companies under chapter 11. Chapter 11 protects jobs and creditors. But other nations don’t put such an emphasis on reorganization. So these foreign nations sometimes aren’t as respectful of our bankruptcy laws as they should be. Of course, the United States has exercised a leadership role in the area of international bankruptcies for many years through section 304 of the Bankruptcy Code which recognizes the validity of foreign bankruptcies. It is time for us to take the lead and make sure that all companies—wherever they are located—are treated fairly when they confront the bankruptcy laws of a foreign nation. If companies fear that they won’t be treated fairly under a foreign nation’s bankruptcy system, they may be less willing to invest. And that would hamper international trade, which America needs if it is to remain a strong and vibrant economy.

Mr. President, unfortunately there is a very parochial perspective among many bankruptcy professionals. The idea has somehow flourished that bankruptcy should be as broad and all-encompassing as possible. I don’t share this point of view. I think we have to remember that bankruptcy should be a last resort. And that means the bankruptcy laws should be narrow and provided only as much relief as is necessary. The so-called automatic stay provides a clear example of the parochial attitude of many in the bankruptcy community. The automatic
Mr. BIDEN. Last weekend the people of Bosnia and Herzegovina went to the polls to elect municipal governments. These local elections had been postponed from last year because of tampering with registrations, chiefly by the Bosnian Serbs.

I am happy to report, Mr. President, that this year's municipal elections were a success. Despite dire threats of violence against refugees and displaced persons who wanted to cross over to their former homes to vote, over 2 days not one single serious violence occurred in the entire country.

Why? Because SFOR, led by recently reinforced American troops, made clear to all parties that violence would not be tolerated.

Every single time over the past several years when the West has been forceful in its behavior, the ultra-nationalists in Bosnia have backed down.

The elections were carried out by the Organization for Security and Cooperation in Europe (OSCE), in which the United States is an active member. The OSCE deserves a great deal of credit for its successful labors.

The results of the elections will not be known for several days. Already, however, some encouraging signs are emerging. In Tuzla, the Muslim Party for Democratic Action [SDA] conceded defeat by Mayor Selim Beslagic's multi-ethnic joint list. I met Mayor Beslagic last month. He represents just one of many new concerned, pragmatic politicians that can rebuild Bosnia.

Until now the three ethnically based parties that profess to represent the interests of the Muslims, Serbs, and Croats have dominated the airwaves and the patronage system. Tuzla—and perhaps other cities in both the federation and the Republika Srpska—show that if SFOR and the international community guarantee equal access, their monopoly on power can be broken.

Moreover, it is likely that thanks to absentee voting and to the protection offered by SFOR to returning refugees, the election may reverse the vile ethnic cleansing of the war. For example, the town of Drvar in western Herzegovina was 97 percent Serb until the town's inhabitants were driven out in the fall of 1995. Last weekend the Croats who displaced the Serbs did their best to harass returning Serb voters. International election officials from the OSCE, however, insisted that the Serbs be allowed to vote.

Several other towns like Jajce and Srebrenica, sites of the largest massacre in Europe since World War II, may see their former inhabitants, in these two cases Muslims, forming the governments.

The international community is now faced with the stark question of whether it will enforce the results of the elections by guaranteeing that the newly elected councils not remain governments in exile.

Enforcing the election results, of course, means that the right of refugees and displaced persons to return must be honored. In most cases that would be able to be accomplished only by the international community under the protection of SFOR.

Mr. President, I believe we have no choice in this matter. Both for moral and practical reasons we must move rapidly to enforce resettlement of refugees. This will be a difficult task, and time is short before the onset of the Balkan winter. Most likely we will have to begin with highly visible demonstration returns in one to two selected towns. But we must keep the democratic momentum going.

Rebuilding shattered Bosnia is an immense undertaking. Now for the first time in years, there has been a string of successes. The United States has been the prime mover in these, and we must continue our valuable and honorable work.

I thank the Chair and yield the floor.

THE VERY BAD DEBT BOXSCORE
Mr. HELMS. Mr. President, at the close of business yesterday, Monday, September 15, 1997, the Federal debt stood at $5,388,983,472,859.37. (Five trillion, three hundred eighty-eight-two thousand, eight hundred forty-nine dollars and thirty-seven cents)

Ten years ago, September 15, 1987, the Federal debt stood at $4,033,874,000,000. (Four trillion, thirty-three billion, eight hundred seventy-four million)

Fifteen years ago, September 15, 1982, the Federal debt stood at $1,113,183,000,000. (One trillion, one hundred thirteen billion, one hundred eighty-three million)

Twenty-five years ago, September 15, 1972, the Federal debt stood at $436,866,000,000 (Four hundred thirty-six billion, eight hundred sixty-six million)

Mr. HATCH. Mr. President, it is with great pleasure that I join with my colleagues in celebrating Hispanic Heritage Month.

Since 1968, we have formally recognized and celebrated the tremendous contributions of Hispanic-Americans to the history, strength, security, and development of our great nation. This year, we once again embark on this
month-long celebration. It is right to honor more than five centuries of contributions by Hispanics to the development not only of our great nation, but of the Western Hemisphere and the world.

As I look back on the history of my own State I see the many great contributions Hispanics have made to its development and progress. It was Fa- ther Escalante who first charted the territory of what is now Utah and made way for the major trade routes that followed. It was through the determination, sweat, and dedication of Mexican-Americans and other Hispanics, working alongside non-Hispanics that our railroads, great steel plants, and mining industries were established, making our State competitive in national and global markets. And our State is home to many great Hispanic-Americans, past and present, including Antonio Amador, former Vice-chair of the U.S. Merit Systems Protection Board, John J. Portales, Victor Valdez, Maria Garcia, the executive director of Neighborhood Housing Services, Inc.; and John Medina, chair of Utah’s Coalition of La Raza.

My experience has shown me that Hispanics are a strong and proud people, loyal, patriotic, courageous, and dedicated to their families, their country, and their communities. Hispanics have a strong work ethic and tremendous faith in the American Dream. They have contributed to the advancement of all people in every area, to music, the arts, science, engineering, mathematics, and government.

I am thrilled to see so many wonderful Hispanic role models help light the way for Hispanic youth to attain the American Dream. Jaime Escalante, the Garfield High School mathematics teacher, helped an unprecedented number of Hispanic students pass the advanced placement tests in calculus. And, Amalia V. Betanzos, president of the John V. Lindsay Wilcat Academy, an alternative high school with tremendous success rates, has helped us all to see what faith and encouragement can do for the soul.

Such great recording artists as Los Lobos, the late Selena, Freddy Fender, and Gloria Estefan have brought joyous Latin rhythms into our homes and our hearts and their authors, like Luis Valdez, Victor Villasenor, and Nicholas Mohr, and great screen artists like the late Raul Julia, Andy Garcia, Jimmy Smits, Edward James Olmos, and Rita Moreno have entertained while they inspired us. And the leadership and foresight of Permanent United Nations Representative and former Congressman Bill Richardson, and Carmen Zapata, director and co-founder of the Bilingual Foundation of the Arts, helps pave the way for our children as they enter the 21st century.

And, of course, Nancy Lopez, Chi Chi Rodriguez, Pedro Morales, Gigi Fernandez, and Trent Dimas are but five of the great athletes who have shared with us the pride and success born of great sacrifice and a hunger for perfection. We are proud of their accomplishments. It is important that, when they win, all America cheers.

But for the contributions of Hispanics to the strength of our Nation, many Hispanics have not yet fully shared in the dream. The national dropout for Hispanics exceeds 30 percent—for non-Hispanics the rate is 11 percent, and for blacks, the rate is 16 percent. For any ethnic group, and their educational attainment levels are among the lowest for any ethnic group. Hispanic children are most likely to be among America’s poor, even to have the highest labor participation rates. Hispanics are most likely to lack health insurance and access to regular health care, yet suffer disproportionately from certain diseases. We must continue to do better.

As the youngest and fastest growing minority community in the Nation, Hispanics must share equally in the benefits and opportunities of this great Nation, so that our country might grow stronger and compete in global markets.

For this reason, in 1987, Senator John Chafee and I established the U.S. Senate Hispanic Caucus, which now numbers 24 Senators. The task force provides a unique forum for Hispanic leaders to raise awareness and support on the national level for key issues facing the Hispanic community in the areas of education, economic development, employment, and health. The task force is aided by a bipartisan, volunteer advisory committee, for whose service we are very grateful.

We have made great strides and we continue to progress. But I long for the day when a task force on Hispanic affairs no longer exists because there is no longer a need; because Hispanics will have succeeded in full measure in joining the ranks of the public officials, the CEOs of corporations, the teachers, doctors, lawyers, the U.S. Senators, Congressmen, and Presidents of the United States. As we gather this month to celebrate Hispanic Heritage Month, let us celebrate the accomplishments of this year’s Hispanic Heritage Awards: Andy Garcia, Nancy Lopez, Amalia V. Betanzos, Nicholasa Mohr, Bill Richardson, and Carmen Zapata.

And, let’s also give a nod to those many, many other Hispanic-Americans, whose daily contributions often go unrecognized, but whose legacy continues to demonstrate the viability of the American Dream.

Mr. CAMPBELL. Mr. President, today I join my friend and colleague from Utah, Senator Hatch, and other colleagues in recognition of Hispanic Heritage Month and to offer a few remarks regarding the Hispanic tradition in my home State of Colorado and their many contributions to our great country.

To begin with, Colorado is the Spanish word for red, thus we owe the name of our State to Hispanics. The town where I live is Ignacio which is Spanish for Ignatius, and the county I live in is La Plata which is Spanish for silver.

As you can see, Mr. President, in my State it is next to impossible to look in any direction without being reminded of Hispanic heritance. More than two thirds of the territory of the 48 contiguous States was discovered, settled or governed by Spanish speaking people. The Hispanic tradition in the United States is as new as the families who enter every year in search of a better life and as old as 1513 when Ponce de Leon landed on the east coast of the peninsula he called La Florida.

Hispanics have enriched us with their cultural traditions and their commitment to la familia, the family. Their language, art, music, and food are today very much part of the American landscape. These contributions help make America stronger.

Let us not forget their contributions in defense of our country. Hispanic blood has been spilled in every conflict and war since the Civil War when John Ortega of the U.S. Navy was awarded the Congressional Medal of Honor on December 31, 1864, and as late as May 24, 1970 when it was awarded to Louis Rocco of Albuquerque, NM, for service in Vietnam. In between these two distinguished soldiers, Hispanics have been awarded 36 more medals making them the most decorated minority in our history proportionate to their numbers. Jose P. Martinez of Ault, CO, is also a past recipient of this highest honor we can bestow on our fighting men and women.

Equality is a value central to the promise of America, and we must be conscious and proactive in insuring that equal opportunity is available to all who serve and contribute to the betterment of our country. Hispanics have fought for the idea and ideals of America and are deserving of an equal share of all of its rewards, not more, not less, but equal. That is the promise of America and it is the promise we must make, and keep, to America’s Hispanics.

Mr. President, throughout my life, both personal and public, Hispanics have honored me with their friendship and support. It is with great pleasure I honor them here on the floor of the U.S. Senate in recognition of Hispanic Heritage Month.

Mr. McCAIN. Mr. President, I am pleased to speak today as co-chair of the Senate Republican Task Force on Hispanic Affairs and to thank this month’s focus on Hispanic Heritage Month.

Although this special month has been celebrated every year at this time since 1968, Hispanics have been making
tremendous contributions to our Nation and to my State of Arizona for many generations.

American culture has been enriched by numerous Hispanic influences. Many Americans claim Hispanic culture in everything from food to music, and even celebrate their holidays. This month, set aside by Presidential proclamation, marks several historical events including Independence Day for Mexico, Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua, and the Dia de la Raza.

It is important to recognize the rich variety of backgrounds that make up this burgeoning segment of society. All too often the various groups that make up Hispanics are lumped together and non-Hispanics forget the dynamic differences between Mexicans and Puerto Ricans or Salvadorans and Cubans, for example. But when Hispanics come together—tied by social and cultural similarities—they form a powerful group that can be a force for change.

With more than 22 million Hispanics living in the United States, their importance cannot be understated. The number of Hispanic children is only exceeded by the number of non-Hispanic white children. Each generation of children will enter all sectors of public and private life and shape the course of the Nation. And our Nation will be a better place for it.

Their contribution to the economy is significant, with studies indicating that Hispanic businesses remain the fastest growing segment of the small business community. In Arizona alone, the current Hispanic buying power is approximately $6.8 billion with an expected growth of 2.3 percent annually.

While these statistics are compelling, surprisingly, there is much more to be done. The Hispanic dropout rate has hovered around 30 percent for the past 20 years, and Hispanics are the minority group who have health insurance. The negative repercussions of these conditions are not acceptable and are detrimental to America's future.

To further the social and economic well-being of Hispanics we must address their needs with conscientious policy and remember these in all our legislative efforts. That is why I am chair of the Senate Republican Task Force on Hispanic Affairs. The task force helps ensure that the needs of the Hispanic community are represented in Federal policy. Through meetings and forums, I speak with Hispanics both in Arizona and from all over the country.

Some of the Hispanics we will be hearing from this month include Sandy Fernandez, President of the Arizona Hispanic Chamber of Commerce [AHCC], who recently received the Exemplary Leadership Award. She is credited with turning AHCC into an agency that provides technical assistance and training to small businesses. Also in attendance is Mr. William Y. Velez, a mathematics professor at the University of Arizona, who this month received the Excellence in Science, Mathematics and Engineering Mentoring Presidential Award. He recruits Hispanic and native American students to study mathematics. We thank them for their contributions to America's future.

During Hispanic Heritage Month we will learn about the colorful and proud heritage of the Hispanic people who are dedicated to their families, communities, and country. And when this month's celebrations have come to a close, let us not forget that the success of Hispanic Americans is critical to the future of the United States.

Mr. D'EWINE. Mr. President, I am very pleased to join my colleagues here today in recognizing Hispanic Heritage Month.

Americans of Hispanic descent are in this country because they, their parents, or grandparents, or great-grandparents, or even more distant ancestors, made an act of faith in America.

They came here, much as my own great-grandfather, Denis DeWine, did back in the 1840's because they wanted a chance at a brighter future. And in return, they were willing to work hard to build up this country.

That same spirit lives on in today's U.S. Hispanic community—and we ought to look at that spirit as an inspiration to ensure that America remains the kind of place people would want to come to.

There's one area of law I'm working on that is especially important in this context. I'm talking about the attempts to change America's immigration law and make it more restrictive. I read one article in which advocates of restriction repeatedly called new Americans 'aliens'—not 'immigrants' or 'new Americans.' As if they were a different kind of people from us, who come from somewhere as strange as outer space.

I call these people something else. I call them Americans.

Now, we all know that there's nothing new about anti-immigrant movements. We've had them again and again, throughout American history. But we have established a proud tradition in this country of overcoming them, of resisting the temptation to turn inward to ourselves—of welcoming new people and new ideas, and choosing hope over fear.

Mr. President, I am pleased to transmit a legislative proposal entitled the "Export Expansion and Reciprocal Trade Agreements Act of 1997." Also transmitted is a section-by-section analysis.

This proposal would renew over 60 years of cooperation between the Congress and the executive branch in the negotiation and implementation of market-opening trade agreements for the benefit of American workers and companies.

The sustained, robust performance of our economy over the past 5 years is powerful proof that congressional-executive cooperation works. We have made great strides together. We have invested in education and in health care for the American people. We have achieved an historic balanced budget agreement. At the same time, we have put in place trade agreements that have lowered barriers to American products and services around the world.

Our companies, farms, and working people have responded. Our economy has produced more jobs, more growth, and greater economic stability than at any time in decades. It has also generated more exports than ever before. Indeed, America's remarkable economic performance over the past 5 years has been fueled in significant part by the strength of our dynamic export sector. Fully 96 percent of the world's consumers live outside the United States. Many of America's greatest economic opportunities today lie beyond our borders. The future promises still greater opportunities.
MESSAGES FROM THE HOUSE
At 11:29 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that pursuant to the provisions of 22 U.S.C. 276d, the Speaker appoints the following Members of the Congress as the U.S. delegates to the Interparliamentary Group, in addition to Mr. Houghton, chairman, appointed on March 13, 1997: Mr. Bereuter, Mr. Goss, Mr. Stearns, Mr. Manzullo, Mr. English of Pennsylvania, Mr. Sanford, Mr. Hamilton, Mr. Oberstar, Mr. Peterson of Minnesota, Ms. Danner, and Mr. Hastings of Florida.

At 5:15 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2016) making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 1998, and for other purposes.

The message also announced that the House has concurred in the Senate amendments to the bill (H.R. 2159) making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1998, and for other purposes.

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–2944. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the cumulative report on rescissions and deferrals dated September 17, 1997, as required jointly by the order of January 30, 1975, as modified by the order of April 11, 1986, to the Committee on Appropriations, to the Committee on the Budget, to the Committee on Agriculture, Nutrition, and Forestry, to the Committee on Armed Services, to the Committee on Banking, Housing, and Urban Affairs, to the Committee on Energy and Natural Resources, to the Committee on Finance, to the Committee on Foreign Relations, to the Committee on Governmental Affairs, and to the Committee on the Judiciary.

EC–2945. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, report on the impact of the closure of the Indian Health Service Hospital; to the Committee on Indian Affairs.

EC–2946. A communication from the Secretary of Defense, transmitting, pursuant to law, report on the impact of a retirement; to the Committee on Armed Services.

EC–2947. A communication from the Assistant Secretary of Defense (Force Management Policy), transmitting, pursuant to law, a notice relative to institutions of higher education; to the Committee on Armed Services.

EC–2948. A communication from the Acting Director of Communications and Legislative Affairs, U.S. Equal Employment Opportunity Commission, transmitting, pursuant to law, the report of the Office of Field Programs for fiscal year 1995; to the Committee on Labor and Human Resources.

EC–2949. A communication from the Secretary of Education, transmitting, pursuant to law, the report of the summary of Chapter 2 annual reports for the 1994-1995 school year; to the Committee on Labor and Human Resources.

EC–2950. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, the report of the texts of international agreements, other than treaties, and background statements; to the Committee on Foreign Relations.

EC–2951. A communication from the Secretary of Energy, transmitting, pursuant to law, the report on the status of Exxon and Stripper Well Oil Overcharge Funds as of December 31, 1996; to the Committee on Energy and Natural Resources.

EC–2952. A communication from the Director of the Rulemaking Coordination Department of the Office of Management and Budget, pursuant to law, two rules including a rule entitled “Energy Conservation Program for Consumer Products” (RIN9041-AA68, AA76); to the Committee on Energy and Natural Resources.

EC–2953. A communication from the Acting Under Secretary of Defense (Comptroller), transmitting, pursuant to law, the report of a violation of the Antideficiency Act; to the Committee on Appropriations.

EC–2954. A communication from the Chief of the Regulations and Congressional Oversight Service, Department of the Treasury, transmitting, pursuant to law, the report of Revenue Ruling 97–30; to the Committee on Finance.

EC–2955. A communication from the Chief of the Regulations Branch, U.S. Customs
BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time, and referred to the Committee on Finance, discharged pursuant to section 1023 of the Committee on Finance.

By Mr. D'AMATO (for himself and Mr. SARBANES) (by request):

S. 1179. A bill to amend the National Flood Insurance Act of 1968 to reauthorize the National Flood Insurance Program; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. KEMPTHORNE (for himself, Mr. CHAFEE, Mr. BAUCUS, and Mr. REID):

S. 1180. A bill to reauthorize the Endangered Species Act; to the Committee on Environment and Public Works.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. D'AMATO (for himself, Mr. CHAFEE, Mr. SARBANES) (by request):

S. 1179. A bill to amend the National Flood Insurance Act of 1968 to reauthorize the National Flood Insurance Program; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. KEMPTHORNE:

S. 1181. A bill to amend the Internal Revenue Code of 1986 to provide Federal tax incentives to owners of environmentally sensitive lands to enter into conservation easements for the protection of endangered species habitat, to allow a deduction from the gross estate of a decedent in an amount equal to the value of real property subject to an endangered species conservation agreement, and for other purposes; to the Committee on Finance.

By Ms. SNOWE (for herself, Mr. ABRAMS, and Mr. GRAMM):

S. 1182. A bill to amend the Congressional Budget and Impoundment Control Act of 1974 to limit the use of nonemergency matters in emergency legislation and permit matter that is extraneous to emergencies to be stricken as provided in the Byrd rule; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, as modified by the order of April 11, 1986, with instructions that if one Committee reports, the other Committee has thirty days to report or be discharged.

REPORTS OF COMMITTEES

The following reports of committees were submitted on September 15, 1997:

By Mr. ROTH, from the Committee on Finance, discharged pursuant to section 1023 of P.L. 93-344.

S. 1179. A bill dissolving the cancella-

tion transmitted by the President on August 11, 1997, regarding Public Law 105-33.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. D'AMATO (for himself and Mr. SARBANES) (by request):

S. 1179. A bill to amend the National Flood Insurance Act of 1968 to reauthorize the National Flood Insurance Program; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. KEMPTHORNE (for himself, Mr. CHAFEE, Mr. BAUCUS, and Mr. REID):

S. 1180. A bill to reauthorize the Endangered Species Act; to the Committee on Environment and Public Works.

By Mr. KEMPTHORNE:

S. 1181. A bill to amend the Internal Revenue Code of 1986 to provide Federal tax incentives to owners of environmentally sensitive lands to enter into conservation easements for the protection of endangered species habitat, to allow a deduction from the gross estate of a decedent in an amount equal to the value of real property subject to an endangered species conservation agreement, and for other purposes; to the Committee on Finance.

By Ms. SNOWE (for herself, Mr. ABRAMS, and Mr. GRAMM):

S. 1182. A bill to amend the Congressional Budget and Impoundment Control Act of 1974 to limit the use of nonemergency matters in emergency legislation and permit matter that is extraneous to emergencies to be stricken as provided in the Byrd rule; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, as modified by the order of April 11, 1986, with instructions that if one Committee reports, the other Committee has thirty days to report or be discharged.
But the law must also have balance. It must recognize the rights of people, too.

During our hearings, we heard many compelling stories from people who had to live with the real life impact of the Endangered Species Act. We heard from families in Owyhee County, ID, who cannot get bank loans for their homes because the listing of a tiny snail—the Bruneau Hot Springs snail—has caused their property value to plummet.

We heard from a woman in Laramie, WY, who told us that the mosquito control program in their community had been suspended because of the ESA, putting health risks for the citizens of Laramie, including her son who contracted encephalitis from a mosquito.

We heard from a rancher in Joseph, OR, who described how Federal regulators, under the threat of lawsuit from environmentalists, tried to stop all grazing on forest lands up in the mountains because salmon were spawning in streams that ran through the private land below. In his words, “The cows were up in the high country as far as from the spawning habitat as you could get.”

And we heard from mill workers who lost their jobs when the ESA all but shut down logging in certain national forests. I think that Ray Brady from Grangeville, ID, may have captured best the underlying feeling of frustration with Federal action. He said: “We had a choice of moving, of going someplace else. Why should we? I chose to live in a small community like Grangeville. I chose to work there. I worked there for 28 years and somebody else in a different part of the country makes a decision that has cost me my job and occupation and 28 years worth of experience. Now I am having to start all over again. I don’t have any income. I don’t have any insurance for my family or myself; and I attribute it directly to this Endangered Species Act. Somebody has to do something about it. I mean, not in the future, I mean now.

Ray Brady is right. We need to improve the way the ESA works, and we need to do it right now. We need an ESA that will make advocates out of our farmers and our ranchers.

The bill we are introducing today provides that. For example, if you’re on private land affecting a rare and unique species. It will enhance the recovery of species; and it will treat people fairly.

Let me highlight just a few of the significant improvements that we have included in this legislation.

The bill will put new emphasis on the need to use good science in everything from the listing process through recovery. The Secretary will be required to use the best available science in all of his decisions and to give greater preference to information that is empirical, as opposed to anecdotal. All listing and delisting decisions will be subject to independent peer review. That means that we can all have greater confidence in the decisions made under the ESA.

The bill will add teeth to the recovery planning process so that we’re no longer just running an endangered species emergency room without also providing the prescription for recovery. For the first time, we will set deadlines for the development of recovery plans for every listed species. Each recovery plan will be developed by a recovery team that includes scientists, economists, and representatives of the communities that are affected by the listing of the species. It will establish new substantive requirements for each recovery plan, including recovery measures, benchmarks to measure progress, and a biological recovery goal that will trigger delisting when it is met. We’ll know that the law is working well when species are no longer just being listed, but when they’re also being delisted as a result of a successful recovery plan.

The bill recognizes that we can reduce Federal interference with land management decisions without harming species. In the consultation process, for example, the fact is that people spend too much time trying to comply with too many regulations from too many Federal agencies. That cannot only significantly increase the cost of a project, in some cases, it can be deadly. In 1996, in Yuba County, CA, for example, the Corps of Engineers was prevented from repairing levees south of the city of Marysville because of the impact that the repairs might have on the hibernating garter snake. The work wasn’t done and on January 2, a levee failed in Olivehurst, CA, killing three people and flooding 500 homes.

Under our bill, the Federal action agency, in that case the Corps of Engineers, will have the authority to make the initial determination that its repairs would not be likely to adversely affect the species. The levee repair would go forward. If the Fish and Wildlife Service objected to the initial determination within 60 days. This simple procedural fix will allow projects to be completed on time without jeopardizing endangered species.

Perhaps most important, the bill includes a number of incentives for property owners so that they can become partners in saving species.

The key is maximum flexibility and our bill provides that. For example, if you want to clear a few acres of land to build your vacation home in red cockaded woodpecker territory, our new low effect conservation plan may be just what you need. On the other hand, a county planning its development needs for the next 50 years might choose to enter into a multiple species conservation plan to preserve habitat for all of its rare and unique species. State and local governments won’t be forced to enter into conservation plans to protect unlisted species.

All of the conservation plans are backed by a no-surprises provision that gives landowners certainty that their obligations will be defined by the plan. They won’t be required to provide additional money for conservation measures or to further restrict their activities on the land covered by the plan.

In addition to conservation plans, the bill offers landowners the option of entering into separate agreements to manage land for the benefit of species. A small timber company whose lands are suitable habitat for spotted owls might enter into a safe harbor agreement to let the trees grow to attract spotted owls. We hope that by the end of some agreed-upon period of time, it can harvest the trees. And a farmer might agree to set aside buffer strips for a species in return for compensation under a habitat reserve agreement, and they must meet that burden using real science, not just assumptions or speculation.

When we started this process just over 2 years ago, we asked ourselves the question: Should we make a concerted effort to save species? The answer was yes.

But could we do it without putting people and communities at risk?

Today, I think that we’ve demonstrated that we can. We can save species with less bureaucracy, using good science, incentives, and where necessary, public financial resources.

Charles Mann and Christopher Plummer wrote in their book “Noah’s Choice,” “If we truly want to improve the lot of endangered species, we should stop shooting for the stars, because the arrows will fall back to our feet. By aiming a little closer, we might shoot farther in the desired direction.” And I will add, and hit the target more often. This bill hits the target.

I would like to use my prerogative to just thank my staff for their efforts on this—Buzz Fawcett, Ann Klee, Jim...
Tate, and other members of my staff. I know the other Senators feel as I do about my staff, that they do a tremendous job. As we stand here with results of 18 months of hard effort, we know of the many hours they have contributed as well as this success.

Mr. President, we now have a bill that is bipartisian. We have a bill that is scheduled for a hearing 1 week from today and for markup in committee where amendments will be considered 2 weeks from today. It is our full expectation that we will be able to bring this bill to the floor of the Senate for debate and for a vote sometime near the middle of October. It has been many months, if not years, in the making, to create this legislation which improves the Endangered Species Act, so that we can, again, save species and do it without putting people and communities at risk.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1180

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Endangered Species Recovery Act of 1997.”

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Listing and delisting species.
Sec. 3. Recovery plans.
Sec. 4. Interagency consultation and cooperation.
Sec. 5. Conservation plans.
Sec. 6. Enforcement.
Sec. 7. Education and technical assistance.
Sec. 8. Authorization of appropriations.
Sec. 9. Other amendments.

(c) REFERENCES TO ENDEMIC SPECIES ACT.—Except as otherwise expressly provided, any reference in this Act to an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to this Act in lieu of the provision of the Endangered Species Act (16 U.S.C. 1531 et seq.).

SEC. 2. LISTING AND DELISTING SPECIES.

(a) BEST SCIENTIFIC AND COMMERCIAL DATA AVAILABLE.—Section 3 of the Act (16 U.S.C. 1532) is amended—

(1) by striking the title and inserting the following:

“Listings and Delistings.”

(c) LISTING AND DELISTING.—

(1) FACTORS CONSIDERED FOR LISTING.—Section 3(a)(1) is amended—

(A) in subparagraph (C) by inserting “introduced species,” prior to “disease or predation”; and

(B) in subparagraph (D) by inserting “Federated, State and local government and international scientific organizations” after “international agencies”;

(2) CRITICAL HABITAT.—Section 3(a)(2) is amended by striking paragraph (3).

(3) DELISTING.—Section 4(b)(2) is amended to read as follows:

“(2) DELISTING.—The Secretary shall, in accordance with section 5 and upon a determination that the goals of the recovery plan for a species have been achieved, terminate the procedure for determining, in accordance with subsection (a)(1), whether to remove a species from a list published under subsection (c).”

(4) RESPONSE TO PetITIONS.—Section 4(b)(3) is amended to read as follows:

“(3) RESPONSE TO Petitions.—

(A) ACTION MAY BE WARRANTED.—

(i) IN GENERAL.—To the maximum extent practicable, within 90 days after receiving the petition of an interested person under subsection 538(e) of title 5, United States Code, to—

(1) add a species to, or

(2) remove a species from, or

(3) change the status from a previous determination with respect to either of the lists published under subsection (c), the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. If a petition is found to present such information, the Secretary shall promptly commence a review of the status of the species concerned. The Secretary shall promptly publish each finding made under this subparagraph in the Federal Register.

(ii) MINIMUM DOCUMENTATION.—A finding that the petition presents the information described in clause (i) shall not be made unless the petition provides—

(I) documentation that the fish, wildlife, or plant that is the subject of the petition is a species as defined in section 3;

(II) a description of the available data on the historical and current range and distribution of the species;

(III) an appraisal of the available data on the status and trends of populations of the species;

(IV) an appraisal of the available data on the threats to the species; and

(V) an identification of the information contained or referred to in the petition that has been peer-reviewed or field-tested.

(iii) NOTIFICATION TO THE STATES.—

(D) Petitioned actions.—If the petition is found to present the information described in clause (i), the Secretary shall notify and, if the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, the Secretary shall promptly publish the finding in the Federal Register.

(B) CONFORMING AMENDMENT.—The table of contents for this Act is amended by striking paragraph (3).

(d) RESPONSE TO PetITIONS.—Section 4(b)(3) is amended to read as follows:

“(3) RESPONSE TO Petitions.—

(A) ACTION MAY BE WARRANTED.—

(i) IN GENERAL.—To the maximum extent practicable, within 90 days after receiving the petition of an interested person under subsection 538(e) of title 5, United States Code, to—

(1) add a species to, or

(2) remove a species from, or

(3) change the status from a previous determination with respect to either of the lists published under subsection (c), the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. If a petition is found to present such information, the Secretary shall promptly commence a review of the status of the species concerned. The Secretary shall promptly publish each finding made under this subparagraph in the Federal Register.

(ii) MINIMUM DOCUMENTATION.—A finding that the petition presents the information described in clause (i) shall not be made unless the petition provides—

(I) documentation that the fish, wildlife, or plant that is the subject of the petition is a species as defined in section 3;

(II) a description of the available data on the historical and current range and distribution of the species;

(III) an appraisal of the available data on the status and trends of populations of the species;

(IV) an appraisal of the available data on the threats to the species; and

(V) an identification of the information contained or referred to in the petition that has been peer-reviewed or field-tested.

(iii) NOTIFICATION TO THE STATES.—

(A) ACTION MAY BE WARRANTED.—

(i) IN GENERAL.—To the maximum extent practicable, within 90 days after receiving the petition of an interested person under subsection 538(e) of title 5, United States Code, to—

(1) add a species to, or

(2) remove a species from, or

(3) change the status from a previous determination with respect to either of the lists published under subsection (c), the Secretary shall make a finding as to whether the listing of the species concerned is warranted.

(ii) MINIMUM DOCUMENTATION.—A finding that the petition presents the information described in clause (i) shall not be made unless the petition provides—

(I) documentation that the fish, wildlife, or plant that is the subject of the petition is a species as defined in section 3;

(II) a description of the available data on the historical and current range and distribution of the species;

(III) an appraisal of the available data on the status and trends of populations of the species;

(IV) an appraisal of the available data on the threats to the species; and

(V) an identification of the information contained or referred to in the petition that has been peer-reviewed or field-tested.

(iii) NOTIFICATION TO THE STATES.—

(D) Petitioned actions.—If the petition is found to present the information described in clause (i), the Secretary shall notify and, if the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, the Secretary shall promptly publish the finding in the Federal Register.

(C) DETERMINATION.—Within 12 months after receiving a petition that is found under subparagraph (A)(i) to present substantial scientific or commercial information indicating that the petitioned action may be warranted, the Secretary shall make one of the following findings:

(i) the listing is no longer appropriate because of a change in the factors that the Secretary identified in subsection (a)(1); or

(ii) with respect to a petition to remove a species from either of the lists published under subsection (c) in accordance with subsection (a)(1), if—

(I) the current listing is no longer appropriate because of a change in the factors identified in subsection (a)(1); or

(II) the species is extinct; or

(III) the recovery goals established for the species in a recovery plan approved under section 5(h) have been achieved.

(D) SUBSEQUENT DETERMINATION.—A petition for delisting or reclassification of a species is no longer appropriate because of a change in the factors that the Secretary identified in subsection (a)(1) if—

(i) the current listing is no longer appropriate because of a change in the factors identified in subsection (a)(1); or

(ii) with respect to a petition to delist a species, if—

(I) the current listing is no longer appropriate because of a change in the factors identified in subsection (a)(1); or

(II) the Secretary has made a finding that the species is extinct; or

(III) the recovery goals established for the species in a recovery plan approved under section 5(h) have been achieved.

(E) JUDICIAL REVIEW.—Any negative finding described in subparagraph (A)(i) shall be subject to judicial review.

(F) MONITORING AND EMERGENCY LISTING.—The Secretary shall establish a system to monitor effectively the status of all species with respect to which a finding is made under subparagraph (C)(iii) shall be treated as a petition that is resubmitted to the Secretary under subparagraph (A) on the date of such finding and that presents substantial scientific or commercial information that the petitioned action may be warranted.

(G) Proposed regulations.—Section 4(b)(5) is amended by—

(A) striking “(5) With respect to any regulation” and inserting the following:

(“(5) Proposed regulations.”).

(H) Proposed regulations.—Section 4(b)(5) is amended by—

(A) striking “(5) With respect to any regulation” and inserting the following:

(“(5) Proposed regulations.”).

(B) striking “a determination, designation, or revision” and inserting “a determination or revision”.

(C) striking “(a)(1) or (3) and inserting “(a)(1)”.

SEC. 3. Definitions and general provisions.

“[End of Act]
(D) striking “in the Federal Register,” and inserting “in the Federal Register as provided by paragraph (B),” and

(E) striking subparagraph (E) and inserting the following:

“(E) at the request of any person within 45 days after the date of publication of general notice, promptly hold at least 1 public hearing in which such person would be afforded the opportunity to present any data relevant to the proposed regulation (including at least 1 hearing in an affected rural area, if any) except that the Secretary may not be required to hold more than 5 hearings under this clause.”.

(7) FINAL REGULATIONS.—

(A) Repeal. Section 4(b)(6)(A) is amended to read as follows:

“(A) IN GENERAL.—Within the 1-year period beginning on the date on which general notice is published in accordance with paragraph (5)(A)(i) regarding a proposed regulation, the Secretary shall publish in the Federal Register—

(i) a final regulation to implement the determination,

(ii) notice that the 1-year period is being extended under subparagraph (B)(i), or

(iii) by striking subparagraph (C).

(B) Publication of data and information. Section 4(b)(8) is amended by—

(A) striking “a summary by the Secretary of the best scientific and commercial data available”;

(B) striking “is based and shall” and inserting “is based shall”;

(C) striking “regulation; and if such regulation designates or revives critical habitat, such summary shall, to the maximum extent practicable, also include a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify the critical habitat or may be associated with such designation,” and inserting “regulation, and shall provide, to the degree that it is relevant and available, information regarding the status of the affected species including current population, population trends, current habitat, food sources, predators, and threats to the species, climate change, threats to the species, governmental and non-governmental conservation efforts, or other pertinent information.”

(9) Federal science. Section 4(b) is amended by adding at the end the following:

“(9) ADDITIONAL DATA.—

(A) IN GENERAL.—The Secretary shall identify in the Federal Register with the notice of a proposed regulation pursuant to paragraph (5)(A)(i) a description of additional scientific and commercial data that would assist in the preparation of a recovery plan and—

(i) invite any person to submit the data to the Secretary; and

(ii) describe the means by which the Secretary plans to take for acquiring additional data.

(B) RECOVERY PLANNING.—Data identified and obtained under subparagraph (A) shall be considered in preparing the recovery plan and the Secretary in the preparation of the recovery plan in accordance with section 5.

(C) NO DELAY AUTHORIZED.—Nothing in this section shall require the Secretary to extend any deadline for publishing a final rule to implement a determination except for the extension provided in paragraph (6)(B)(i)) or any deadline under section 5.

(10) INDEPENDENT SCIENTIFIC REVIEW.—

(A) IN GENERAL.—In the case of a regulation pursuant to subparagraph (A)(i) that any species is an endangered species or a threatened species or that any species currently designated as threatened should be removed from any list published pursuant to subsection (c), the Secretary shall provide for independent scientific review by—

(i) selecting independent referees pursuant to subparagraph (B);

(ii) the review, considering all relevant information, and make a recommendation to the Secretary in accordance with this paragraph not later than 1 year after the date of publication of the general notice of the proposed determination; and

(iii) the Secretary, in developing the recovery plan, shall give priority, without regard to the determination that is the subject of the review; and

(B) SELECTION OF REFEREES.—For each independent scientific review to be conducted pursuant to subparagraph (A), the Secretary shall select independent referees from a list provided by the National Academy of Sciences, who—

(i) have not, or represent any person with a conflict of interest with respect to the determination that is the subject of the review; and

(ii) are not participants in a petition to list, change the status of, or remove the species under paragraph (3)(A)(i), or the assessment of a State for the species under paragraph (3)(A)(ii), or the proposed or final determination for an endangered species, unless the Secretary finds, after notice and opportunity for public comment, that a plan will not promote the conservation of the species or because an existing plan or strategy to conserve the species already serves as the functional equivalent to a recovery plan.

(C) FEDERAL ADVISORY COMMITTEE ACT.—

(10) LIST.—Section 4(c) is amended by—

(A) inserting “designated” before “critical habitat”;

(B) inserting “and” before “species”;

(11) PROTECTIVE REGULATION.—Section 4(d) is amended by—

(A) striking “Whenever any species is listed” and inserting the following:

“(1) IN GENERAL.—Whenever any species is listed”; and

(B) adding at the end the following:

“(2) NEW LISTINGS.—With respect to each species listed as a threatened species after the date of enactment of the Endangered Species Recovery Act of 1997, regulations applicable under paragraph (1) to the species shall not be published until after the date on which the Secretary is required to approve a recovery plan for the species pursuant to section 5(c) and may be subsequently revised.”.

(12) RECOVERY PLANS.—Section 4 is amended by striking subsection (f) and redesigning subsections (f) as subsections (g) through (h), respectively.

(13) CONFORMING AMENDMENT.—Section 4(g) (as redesignated by paragraph (12)) is amended by inserting “section 5(c)” in subsection (f) and inserting “section 5.”

(14) PUBLIC AVAILABILITY OF DATA.—Section 3(b), as amended by subsection (a), is amended by adding at the end the following:

“(2) FREEDOM OF INFORMATION ACT EXEMPTION.—The Secretary, and the head of any Federal agency, may withhold or limit the availability of data requested to be released pursuant to section 522 of title 5, United States Code, if the data describes or identifies the location of an endangered species, a threatened species, or a species that has been proposed to be listed as threatened or endangered, and release of the data would be likely to result in increased take of the species.”

SEC. 3. ENHANCED RECOVERY PLANNING.

(a) REDesignation.—Section 5 of the Act is redesignated as section 5A.

(b) RECOVERY PLANS.—The Act is amended by inserting prior to section 5A the following:

“RECOVERY PLANS”.

“SEC. 5. (a) IN GENERAL.—The Secretary, in cooperation with the States, and on the basis of the best scientific and commercial data available, shall develop and implement plans (referred to in this Act as “recovery plans”) for the conservation and recovery of endangered species and threatened species that are indigenous to the United States or in waters under the jurisdiction of the United States, in accordance with the requirements and standards described in this section, unless the Secretary finds, after notice and opportunity for public comment, that a plan will not promote the conservation of the species or because an existing plan or strategy to conserve the species already serves as the functional equivalent to a recovery plan.

(b) Priorities.—To the maximum extent practicable, the Secretary in developing recovery plans, shall give priority, without regard to taxonomic classification, to recovery plans that

(1) address significant and immediate threats to the survival of an endangered species or a threatened species, have the greatest likelihood of achieving recovery of the endangered species or the threatened species, and will benefit species that are more taxonomically distinct;

(2) address multiple species including (A) endangered species, (B) threatened species, or (C) species that the Secretary has identified as candidates or proposed for listing under section 4 and that are dependent on the same habitat at a significant level for species or threatened species covered by the plan;

(3) reduce conflicts with construction, development projects, jobs or other economic activities; and

(4) reduce conflicts with military training and operations.

(c) SCHEDULE. For each species determined to be an endangered species or a threatened species after the date of enactment of the Endangered Species Recovery Act of 1997, for which the Secretary is required to develop a recovery plan under section (a), the Secretary shall publish—

(1) not later than 18 months after the date of the publication of regulations containing the listing determination, a draft recovery plan; and

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“(2) not later than 30 months after the date of publication under section 4 of the final regulation containing the listing determination, a final recovery plan.

(4) DUTIES OF THE RECOVERY TEAM.—(A) IN GENERAL.—Not later than 6 months after publication under section 4 of the final regulation containing the listing determination for a species, the Secretary, in cooperation with the affected States, shall appoint a recovery team to develop a recovery plan for the species or publish a notice pursuant to paragraph (3) that it shall not be required under this subsection. Recovery teams shall include the Secretary and at least one representative from each of the affected States to be representative of the constituencies with an interest in the species and its recovery and in the economic or social impacts of recovery implementation.

(B) REPRESENTATION.—The recovery team shall be selected for their knowledge of the species or for their expertise in the elements of the recovery implementation.

(2) DUTIES OF THE RECOVERY TEAM.—Each recovery team shall prepare and submit to the Secretary the draft recovery plan that shall include a final recommendation of biological recovery measures and alternative measures, if any, to meet the recovery goal under subsection (e)(1). The recovery team may also be called upon by the Secretary to assist in the implementation, review and revision of recovery plans. The recovery team shall also advise the Secretary concerning the designation of critical habitat, if any.

(3) EXCEPTION.—(A) IN GENERAL.—Notwithstanding paragraph (1), the Secretary may, after notice and opportunity for public comment, establish criteria to identify species for which the appointment of a recovery team would not be required under this subsection, taking into account the availability of resources for recovery planning, the extent and complexity of the expected recovery activities and the relative importance of the recovery team to the constituencies associated with the threats to the species.

(B) STATE OPTION.—If the Secretary elects not to appoint a recovery team, the Secretary shall, if the State, in cooperation with local governments and other persons to whom the Secretary refers to title 5, United States Code) to recovery team, shall be required to initiate the procedures for determining whether, in accordance with section 4(a)(1), to remove the species from the list. The Secretary shall promptly obtain independent scientific review of the recommended biological recovery goal.

(2) RECOVERY MEASURES.—The recovery plan shall incorporate recovery measures that will meet the recovery goal.

(A) MEASURES.—The recovery measures may incorporate general and site-specific measures for the conservation and recovery of the species such as—

(i) protect and restore habitat;

(ii) research;

(iii) establishment of refugia, captive breeding, releases of experimental populations;

(iv) actions that may be taken by Federal agencies, including actions that use, to the maximum extent practicable, Federal lands; and

(v) opportunities to cooperate with State and local governments and other persons to whom the Secretary refers to title 5, United States Code) to recovery team, shall be required to initiate the procedures for determining whether, in accordance with section 4(a)(1), to remove the species from the list. The goal shall be based solely on the best scientific estimates of the abundance of the species that will meet the recovery goal.

(B) PEER REVIEW.—The recovery team shall review recovery plans published prior to the date of enactment of the Endangered Species Recovery Act of 1997, the Secretary shall hold at least 1 public hearing on each draft recovery plan, the Secretary shall be required to hold more than 5 hearings under this paragraph.

(c) PROCUREMENT AUTHORITY.—The Secretary, in developing recovery plans, may procure the services of public and private agencies and institutions in subclauses (m), section 5703 of the Federal Register a notice of availability, and a summary of, and a request for written comments on the recommendations of the recovery team, the Secretary shall adopt a final recovery plan that is consistent with the requirements of this section.

(2) SECTION OF RECOVERY MEASURES.—In each draft recovery plan the Secretary shall identify recovery measures that meet the recovery goal and the benchmarks. The recovery measures shall achieve an appropriate balance among the following factors—

(i) the effectiveness of the measures in meeting the recovery goal;

(ii) the period of time in which the recovery goal is likely to be achieved, provided that the time period within which the recovery goal is to be achieved will not pose a significant risk to recovery of the species; and

(iii) the cost of the recovery measures that meet the recovery goal.

(3) BENCHMARKS.—The recovery plan shall include objective, measurable benchmarks expected to be achieved over the course of the recovery plan to determine whether progress is being made towards the recovery goal.

(i) DRAFT RECOVERY PLANS.—(A) IN GENERAL.—In developing a draft recovery plan, the recovery team or, if there is no recovery team, the Secretary, shall consider alternative measures and recommend measures to meet the recovery goal including the benchmarks. The recovery measures shall achieve an appropriate balance among the following factors—

(I) the effectiveness of the measures in meeting the recovery goal;

(ii) the period of time in which the recovery goal is likely to be achieved, provided that the time period within which the recovery goal is to be achieved will not pose a significant risk to recovery of the species; and

(iii) the cost of the recovery measures that meet the recovery goal.

(B) DRAFT RECOVERY PLANS.—(1) REVIEW AND APPROVAL.—The Secretary shall review recovery plans published prior to the date of enactment of the Endangered Species Recovery Act of 1997, the Secretary shall hold at least 1 public hearing on each draft recovery plan, the Secretary shall be required to hold more than 5 hearings under this paragraph.

(2) SUBSEQUENT PLANS.—The Secretary shall review each recovery plan first approved or revised under this section subsequent to the enactment of the Endangered Species Recovery Act of 1997, the Secretary shall review recovery plans published prior to such date.

(ii) MINIMUM STANDARDS.—The Secretary shall review each recovery plan first approved or revised under this section subsequent to the enactment of the Endangered Species Recovery Act of 1997, the Secretary shall review recovery plans published prior to such date.

(i) REVISION OF RECOVERY PLANS.—Notwithstanding any other provisions of this section, the Secretary may revise a recovery plan if the Secretary finds that substantial new information, that may include the failure to meet the benchmarks included in the plan, is available, and that recovery of the species covered by the plan is in jeopardy.

(ii) IN GENERAL.—(A) IN GENERAL.—The Secretary shall review each recovery plan after the Secretary finds that substantial new information, that may include the failure to meet the benchmarks included in the plan, is available, and that recovery of the species covered by the plan is in jeopardy.

(B) REVISION OF RECOVERY PLANS.—(1) IN GENERAL.—The Secretary shall review each recovery plan after the Secretary finds that substantial new information, that may include the failure to meet the benchmarks included in the plan, is available, and that recovery of the species covered by the plan is in jeopardy.

(ii) MINIMUM STANDARDS.—The Secretary shall review each recovery plan first approved or revised under this section subsequent to the enactment of the Endangered Species Recovery Act of 1997, the Secretary shall review recovery plans published prior to such date.

(i) REVISION OF RECOVERY PLANS.—Notwithstanding any other provisions of this section, the Secretary may revise a recovery plan if the Secretary finds that substantial new information, that may include the failure to meet the benchmarks included in the plan, is available, and that recovery of the species covered by the plan is in jeopardy.

(ii) IN GENERAL.—(A) IN GENERAL.—The Secretary shall review each recovery plan after the Secretary finds that substantial new information, that may include the failure to meet the benchmarks included in the plan, is available, and that recovery of the species covered by the plan is in jeopardy.

(B) REVISION OF RECOVERY PLANS.—(1) IN GENERAL.—The Secretary shall review each recovery plan after the Secretary finds that substantial new information, that may include the failure to meet the benchmarks included in the plan, is available, and that recovery of the species covered by the plan is in jeopardy.
shall convene a recovery team to develop the revisions required by this subsection, unless the Secretary has established an exception for the species pursuant to subsection (d)(3).

(4) PROHIBITION ON ASSISTANCE FOR REQUIRED ACTIONS.—The Secretary, in order to comply with this section, may not provide assistance under this paragraph for any action that is required by a permit issued under this Act or that is otherwise required by law.

(5) OTHER PAYMENTS.—Grants provided to an individual private landowner under this paragraph shall be in addition to, and not after notice and comment and have been initiated.

prior to the date of enactment of the Endangered Species Recovery Act of 1997 until revised by the Secretary in accordance with this section:

‘‘(1) IMPLEMENTATION OF RECOVERY PLANS.—

(2) IMPLEMENTATION AGREEMENTS.—The Secretary is authorized to enter into agreements with Federal agencies, affected States, Indian tribes, local governments, private landowners and organizations to implement specific conservation measures identified by an approved recovery plan that promote the recovery of the species on lands or waters owned by, or within the jurisdiction of, each such party. The Secretary may enter into such agreements, if the Secretary, after notice and opportunity for public comment, determines that—

(A) the agreement to the has legal authority and capability to carry out the agreement;

(B) the agreement shall be reviewed and revised as necessary on a regular basis by the parties to the agreement to ensure that it meets the requirements of this section; and

(C) the agreement establishes a mechanism for the Secretary to monitor and evaluate implementation of the agreement.

(3) ASSIGNMENT OF DUTIES.—Each Federal agency identified under subsection (e)(4) shall enter into an implementation agreement with the Secretary not later than 2 years after the date on which the Secretary approves the recovery plan for the species.

For purposes of satisfying this section, the substantive provisions of the agreement shall be within the sole discretion of the Secretary and the head of the Federal agency entering into the agreement.

(3) OTHER REQUIREMENTS.—

(A) RECOVERY TEAM.—Any action authorized, funded or carried out by a Federal agency that is specified in a recovery plan implementation agreement between the Federal agency and the Secretary to promote the recovery of the species and for which the agreement provides sufficient information on the nature, scope and duration of the action to determine the effect of the action on any endangered species, threatened species, or critical habitat shall not be subject to the requirements of section 7(a)(2) for that species, provided the action is to be carried out during the term of such agreement and the Federal agency is in compliance with the agreement.

(B) COMPREHENSIVE AGREEMENTS.—If a non-Federal person proposes to include in an implementation agreement a site-specific action that the Secretary determines meets the requirements of subparagraph (A) and that action would require authorization or funding by one or more Federal agencies, the agencies authorizing or funding the action shall be included in the development of the agreement and shall identify, at that time, all measures for the species that would be required under this Act as a condition of the authorization or funding.

(4) FINANCIAL ASSISTANCE.—

(A) IN GENERAL.—In cooperation with the States and subject to the availability of appropriated funds, the Secretary may provide a grant of up to $25,000 to any individual private landowner to assist the landowner in carrying out a recovery plan implementation agreement under this subsection.

(B) PROHIBITION ON ASSISTANCE FOR REQUIRED ACTIONS.—The Secretary, in order to comply with this Act or other Federal law, may not provide assistance under this paragraph for any action that is required by a permit issued under this Act or that is otherwise required by law.

(C) OTHER PAYMENTS.—Grants provided to an individual private landowner under this paragraph shall be in addition to, and not after notice and comment and have been initiated.

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(A) the agreement to the has legal authority and capability to carry out the agreement;

(B) the agreement shall be reviewed and revised as necessary on a regular basis by the parties to the agreement to ensure that it meets the requirements of this section; and

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(B) COMPREHENSIVE AGREEMENTS.—If a non-Federal person proposes to include in an implementation agreement a site-specific action that the Secretary determines meets the requirements of subparagraph (A) and that action would require authorization or funding by one or more Federal agencies, the agencies authorizing or funding the action shall be included in the development of the agreement and shall identify, at that time, all measures for the species that would be required under this Act as a condition of the authorization or funding.

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(B) the agreement shall be reviewed and revised as necessary on a regular basis by the parties to the agreement to ensure that it meets the requirements of this section; and

(C) the agreement establishes a mechanism for the Secretary to monitor and evaluate implementation of the agreement.

(2) STANDARDS AND GUIDELINES.—The Secretary, in cooperation with the States, shall publish standards and guidelines for the development and implementation of the recovery plan for the species. For purposes of satisfying this section, the substantive provisions of the agreement shall be within the sole discretion of the Secretary and the head of the Federal agency entering into the agreement.

(3) OTHER REQUIREMENTS.—

(A) RECOVERY TEAM.—Any action authorized, funded or carried out by a Federal agency that is specified in a recovery plan implementation agreement between the Federal agency and the Secretary to promote the recovery of the species and for which the agreement provides sufficient information on the nature, scope and duration of the action to determine the effect of the action on any endangered species, threatened species, or critical habitat shall not be subject to the requirements of section 7(a)(2) for that species, provided the action is to be carried out during the term of such agreement and the Federal agency is in compliance with the agreement.

(B) COMPREHENSIVE AGREEMENTS.—If a non-Federal person proposes to include in an implementation agreement a site-specific action that the Secretary determines meets the requirements of subparagraph (A) and that action would require authorization or funding by one or more Federal agencies, the agencies authorizing or funding the action shall be included in the development of the agreement and shall identify, at that time, all measures for the species that would be required under this Act as a condition of the authorization or funding.

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(B) PROHIBITION ON ASSISTANCE FOR REQUIRED ACTIONS.—The Secretary, in order to comply with this Act or other Federal law, may not provide assistance under this paragraph for any action that is required by a permit issued under this Act or that is otherwise required by law.

(C) OTHER PAYMENTS.—Grants provided to an individual private landowner under this paragraph shall be in addition to, and not after notice and comment and have been initiated.

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(A) the agreement to the has legal authority and capability to carry out the agreement;

(B) the agreement shall be reviewed and revised as necessary on a regular basis by the parties to the agreement to ensure that it meets the requirements of this section; and

(C) the agreement establishes a mechanism for the Secretary to monitor and evaluate implementation of the agreement.

(2) STANDARDS AND GUIDELINES.—The Secretary, in cooperation with the States, shall publish standards and guidelines for the development and implementation of the recovery plan for the species. For purposes of satisfying this section, the substantive provisions of the agreement shall be within the sole discretion of the Secretary and the head of the Federal agency entering into the agreement.

(3) OTHER REQUIREMENTS.—

(A) RECOVERY TEAM.—Any action authorized, funded or carried out by a Federal agency that is specified in a recovery plan implementation agreement between the Federal agency and the Secretary to promote the recovery of the species and for which the agreement provides sufficient information on the nature, scope and duration of the action to determine the effect of the action on any endangered species, threatened species, or critical habitat shall not be subject to the requirements of section 7(a)(2) for that species, provided the action is to be carried out during the term of such agreement and the Federal agency is in compliance with the agreement.

(B) COMPREHENSIVE AGREEMENTS.—If a non-Federal person proposes to include in an implementation agreement a site-specific action that the Secretary determines meets the requirements of subparagraph (A) and that action would require authorization or funding by one or more Federal agencies, the agencies authorizing or funding the action shall be included in the development of the agreement and shall identify, at that time, all measures for the species that would be required under this Act as a condition of the authorization or funding.

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(A) IN GENERAL.—In cooperation with the States and subject to the availability of appropriated funds, the Secretary may provide a grant of up to $25,000 to any individual private landowner to assist the landowner in carrying out a recovery plan implementation agreement under this subsection.

(B) PROHIBITION ON ASSISTANCE FOR REQUIRED ACTIONS.—The Secretary, in order to comply with this Act or other Federal law, may not provide assistance under this paragraph for any action that is required by a permit issued under this Act or that is otherwise required by law.

(C) OTHER PAYMENTS.—Grants provided to an individual private landowner under this paragraph shall be in addition to, and not after notice and comment and have been initiated.
the basis of the best scientific and commercial data available and after taking into consideration the economic impact, impacts to military training and operations, and any other factor relevant to the list that may affect such designation of an area as critical habitat. The Secretary shall determine if the benefits of the exclusion outweigh the benefits of designating the area as part of the critical habitat. The Secretary determines that the failure to designate the area as critical habitat will result in the extinction of the species.

(b) Revisions.—The Secretary may, from time-to-time and as appropriate, revise a designation. Each area designated as critical habitat before the date of enactment of the Endangered Species Recovery Act of 1997 shall continue to be considered so designated, until the designation is revised in accordance with this subsection.

(1) A determination that revision may be warranted.—To the maximum extent practicable, within 90 days after receiving the petition or commercial information indicating that the requested revision may be warranted, the Secretary shall make a finding as to whether the petition or commercial information indicates that the intended purpose of the action, that can be implemented consistent with the scope of the proposed action, is economically and technologically feasible, and that the Secretary believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat.

(2) Notice of Proposed Action.—Within 12 months after receiving a petition that is found under subparagraph (A) to present substantial scientific or commercial information indicating that the requested revision may be warranted, the Secretary shall determine how to proceed with the requested revision, and shall promptly publish notice of such intention in the Federal Register.

(3) Proposed and final regulations.—Any regulation to designate critical habitat or increase the area designated as critical habitat shall be proposed and promulgated in accordance with paragraphs (4), (5) and (6) of section 4(b) in the same manner as a regulation to implement a determination with respect to listing a species.

(c) Reports.—The Secretary shall report every 2 years to the Committee on Environment and Public Works of the Senate and to the Committee on Resources of the House of Representatives on the status of efforts to develop and implement recovery plans for all species listed pursuant to section 4 and on the status of all species for which such plans have been developed.

(1) Citizen suits.—Section 11(g)(1)(C) of the Act (16 U.S.C. 1536(g)(1)(C)) is amended by inserting “or section 5” after “section 4”.

(d) Conforming amendments for recovery plans.—(1) Section 605(c)(4)(A)(i)(1), (ii), and (iii) of the Endangered Species Act of 1973 (16 U.S.C. 1536(c)(4)(A)(i)(1), (ii), and (iii)) are amended by inserting “and section 5” before “section 4”.

(2) The table of contents in the first section of the Act (16 U.S.C. 1531) is amended by striking the table of contents and inserting in its place the following:

“Sec. 5. Recovery plans.
Sec. 5A. Land acquisition.”.
an endangered species or a threatened species or designation of critical habitat requires re-initiation of consultation under section 7(a)(2) on an already approved action as determined by paragraph (A). The consultation shall commence promptly, but no later than 90 days after the date of the determination or designation, and be completed within the time frame established by the date on which the consultation is commenced.

"(C) SPECIFIC ACTIONS DURING CONSULTATION.—Notwithstanding subsection (d), the Federal agency implementing the land use plan or resource management plan under subparagraph (B) may authorize, fund, or carry out a consultation on the land use plan or resource management plan under subparagraph (B) pursuant to the consultation procedures of this section and related regulations, if—

"(i) no consultation on the action is required; or

"(ii) consultation on the action is required and the Secretary issues a biological opinion and the action satisfies the requirements of this section.

(3) IMPROVED FEDERAL AGENCY COORDINATION.—Section 7(a) (16 U.S.C. 1536(a)) is amended by adding at the end the following:

"(A) CONSULTATION WITH A SINGLE AGENCY.—Consultation and conferencing under this subsection between the Secretary and a Federal agency may, with the approval of the Secretary, encompass a number of related actions by the agency to be carried out within a particular geographic area.

(4) CONSIDERATION OF OTHER AGENCIES.—The Secretary may consult with and confer with other Federal agencies, the States, model permit applicants, and other persons concerning activities that may affect the same species or threatened species, or candidates for listing included in the plan, prior to issuance of the final biological opinion.

(5) USE OF INFORMATION PROVIDED BY STATES.—Section 7(b)(1) (16 U.S.C. 1536(b)(1)) is amended by adding at the end the following:

"(E) USE OF INFORMATION PROVIDED BY STATES.—In conducting a consultation under subsection (a)(2), the Secretary shall actively solicit and consider information from the State agency in each affected State.

(6) OPPORTUNITY TO PARTICIPATE IN CONSULTATION.—Section 7(b)(1) (16 U.S.C. 1536(b)(1)) is further amended by adding at the end the following:

"(D) OPPORTUNITY TO PARTICIPATE IN CONSULTATION.—(i) IN GENERAL.—In conducting a consultation under subsection (a)(2), the Secretary shall provide any person who has sought authorization or funding for an action from a Federal agency and that authorization or funding is the subject of the consultation, the opportunity to—

"(I) receive information, upon request subject to the exemptions of the Freedom of Information Act (5 U.S.C. 552(b)), and the availability of reasonable and prudent alternatives (if a jeopardy opinion is to be issued) that the Secretary and the person can take to avoid violation of section 7(a)(2);

"(II) receive information, upon request subject to the exemptions of the Freedom of Information Act (5 U.S.C. 552(b)) on the status of the species, threats to the species, and conservation measures, used by the Secretary to develop the draft biological opinion and the final biological opinion, the associated incidental take statements; and

"(III) received a copy of the draft biological opinion from the Federal agency and, prior to issuance of the final biological opinion, submit comments on the draft biological opinion, discuss with the Secretary and the Federal agency the basis for any finding in the draft biological opinion.

"(ii) EXPLANATION.—If reasonable and prudent alternatives cannot be carried out within a particular geographic area.

(7) PARTICIPATION BY FEDERAL AGENCIES.—Section 7(b)(4)(B) (16 U.S.C. 1536(b)(4)(B)) is amended—

"(I) by inserting “and mitigate” after “to minimize”; and

"(ii) by adding at the end the following: “For purposes of this subsection, reasonable and prudent measures shall be related both in nature and extent to the effect of the proposed activity that is the subject of the consultation.”

(8) REVISION OF REGULATIONS.—Not later than 1 year after section 7(a)(2) on an already approved action authorizing any taking referred to in paragraph (1)(B), the Secretary shall promulgate modifications to part 402, Code of Federal Regulations, to implement the provisions of this section.

SEC. 5. CONSERVATION PLANS.

(A) PERMIT FOR TAKING ON THE HIGH SEAS.—Section 10(a)(1)(A) (16 U.S.C. 1539(a)(1)(A)) is amended by adding at the end the following:

"(b) MONITORING.—Section 10(a)(2)(B) (16 U.S.C. 1539(a)(2)(B)) is amended by striking “monitoring” and inserting in lieu thereof “monitoring”.

"(c) OTHER PLANS.—Section 10(a) (16 U.S.C. 1539(a)) is amended by striking paragraph (2)(C) and inserting the following new paragraphs:

"(8) MULTIPLE SPECIES CONSERVATION PLANS.—

"(A) IN GENERAL.—In addition to one or more listed species, a conservation plan developed under paragraph (2) may, at the request of the applicant, include species proposed for listing, critical habitat, or species candidates designated as endangered or threatened species if, after notice and public comment, the Secretary finds that the permit application and the related conservation plan satisfy the criteria of paragraphs (2)(A) and (2)(B) with respect to listed species, and that the permit application and the related conservation plan with respect to other species satisfy the following requirements:

"(i) The impact on non-listed species included in the plan will be incidental;

"(ii) The maximum extent practicable, minimize and mitigate such impacts;

"(iii) The actions taken by the applicant with respect to species proposed for listing or candidates for listing included in the plan, if undertaken by all similarly situated persons, would be likely to eliminate the need to list the species as an endangered species or threatened species or prevent the species from the duration of the agreement as a result of the activities conducted by those persons;

"(iv) The actions taken by the applicant with respect to other non-listed species included in the permit application, which are likely to eliminate the need to list the species as an endangered species or threatened species, or result in the species being within the range of such species, would not be likely to contribute to a determination to list the species as an endangered species or a threatened species for the duration of the agreement; and

"(v) The criteria of paragraphs (2)(A)(v), (2)(B)(iii) and (2)(B)(iv) and the Secretary has received such other assurances as the Secretary may require that the plan will be implemented. The permit shall contain such terms and conditions as the Secretary deems necessary to adequately carry out the purposes of this paragraph, including, but not limited to, such monitoring and reporting requirements as the Secretary deems necessary to determine whether such terms and conditions are being complied with.

"(C) TECHNICAL ASSISTANCE AND GUIDANCE.—To the maximum practicable extent, the Secretary and the heads of other Federal agencies, in cooperation with the States, are authorized and encouraged to provide technical assistance or guidance to any State or person that is developing a multiple species conservation plan under this paragraph.

(9) COMPLIANCE.—An action by the Secretary, the Attorney General, or a person under section 11(g) to ensure compliance with a multiple species conservation plan may only be brought against a permittee or the Secretary.

(F) EFFECTIVE DATE OF PERMIT FOR NON-LISTED SPECIES.—For any species not listed as an endangered species or a threatened species, but covered by an approved multiple species conservation plan, the permit issued under paragraph (1)(B) is effective without further action by the Secretary at the time the species is listed pursuant to section 4, and to the extent that the taking is otherwise prohibited by subparagraphs (B) or (C) of section 9(a)(1).

(4) LOW EFFECT ACTIVITIES.—

"(A) IN GENERAL.—Notwithstanding paragraph (2)(A), the Secretary may issue a permit for a low effect activity authorizing any taking referred to in paragraph (1)(B), if the Secretary determines that the activity will have no more than a negligible effect, both individually and cumulatively, on any species, any taking associated with the activity will be incidental, and the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. The permit shall require, to the extent appropriate, actions to be taken by the permittee to offset the effects of the activity on the species.

"(B) APPLICATIONS.—The Secretary shall minimize the costs of permitting to the applicant by developing, in cooperation with the States and model permit applicants that would constitute conservation plans for low effect activities.

(10) PUBLIC COMMENT; EFFECTIVE DATE.—Under paragraph (9), the Secretary shall provide
notice in a newspaper of general circulation in the area of the activity not later than 30 days after receipt and an opportunity for comment on the permit. If the Secretary determines that the significant adverse action or activity may not be consistent with the terms of the permit, or that the permit is not in compliance with the terms and conditions of the permit or the conservation plan,” shall identify—

(’1) other actions taken under the agreement, if undertaken by all similarly situated persons, would produce a conservation benefit that would be likely to eliminate the need to list the species under section 4(c) as a result of the activities of those persons during the duration of the agreement; and

(‘ii) the actions taken under the agreement will not adversely affect an endangered species or a threatened species; and

(iii) there are such other measures that the Secretary may require as being necessary or appropriate for the purposes of the agreement.

(’v) the agreement includes such monitoring and reporting agreements as the Secretary deems necessary for determining whether the terms and conditions of the agreement are being complied with.

(’d) EFFECTIVE DATE OF PERMIT.—A permit issued under subsection (a)(1)(C) shall take effect at the time the species is listed pursuant to section 4(c), provided that the permit is in full compliance with the terms and conditions of the agreement.

( ’d) ASSURANCE.—A person who has entered into a candidate conservation agreement under this section or any other agreements with the Secretary that the person will be required to undertake any additional actions taken under the agreement, if undertaken by all similarly situated persons, would produce a conservation benefit that would be likely to eliminate the need to list the species under section 4(c) as a result of the activities of those persons during the duration of the agreement; and

(’ii) the actions taken under the agreement will not adversely affect an endangered species or a threatened species; and

(iii) there are such other measures that the Secretary may require as being necessary or appropriate for the purposes of the agreement.

(’v) the agreement includes such monitoring and reporting agreements as the Secretary deems necessary for determining whether the terms and conditions of the agreement are being complied with.

(’d) EFFECTIVE DATE OF PERMIT.—A permit issued under subsection (a)(1)(C) shall take effect at the time the species is listed pursuant to section 4(c), provided that the permit is in full compliance with the terms and conditions of the agreement.

(’d) ASSURANCES.—A person who has entered into a candidate conservation agreement under this section or any other agreements with the Secretary that the person will be required to undertake any additional actions taken under the agreement, if undertaken by all similarly situated persons, would produce a conservation benefit that would be likely to eliminate the need to list the species under section 4(c) as a result of the activities of those persons during the duration of the agreement; and

(’ii) the actions taken under the agreement will not adversely affect an endangered species or a threatened species; and

(iii) there are such other measures that the Secretary may require as being necessary or appropriate for the purposes of the agreement.

(’v) the agreement includes such monitoring and reporting agreements as the Secretary deems necessary for determining whether the terms and conditions of the agreement are being complied with.

(’d) EFFECTIVE DATE OF PERMIT.—A permit issued under subsection (a)(1)(C) shall take effect at the time the species is listed pursuant to section 4(c), provided that the permit is in full compliance with the terms and conditions of the agreement.

(’d) ASSURANCES.—A person who has entered into a candidate conservation agreement under this section or any other agreements with the Secretary that the person will be required to undertake any additional actions taken under the agreement, if undertaken by all similarly situated persons, would produce a conservation benefit that would be likely to eliminate the need to list the species under section 4(c) as a result of the activities of those persons during the duration of the agreement; and

(’ii) the actions taken under the agreement will not adversely affect an endangered species or a threatened species; and

(iii) there are such other measures that the Secretary may require as being necessary or appropriate for the purposes of the agreement.

(’v) the agreement includes such monitoring and reporting agreements as the Secretary deems necessary for determining whether the terms and conditions of the agreement are being complied with.
“(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Interior $10,000,000 and the Secretary of Commerce $5,000,000 for each of fiscal years 1997 through 2003 to assist non-Federal property owners to carry out the terms of habitat reserve programs under this subsection.

(b) HABITAT CONSERVATION PLANNING FUND.—Section 10(a) (16 U.S.C. 1538(a)) is further amended by adding at the end thereof the following paragraph:

(7) HABITAT CONSERVATION PLANNING FUND.

(A) ESTABLISHMENT.—There is established in the Treasury of the United States a revolving fund, to be known as the ‘Habitat Conservation Planning Fund’, to be used in carrying out this subsection (referred to in this paragraph as the ‘Fund’), consisting of—

(i) amounts made available under section 15(f);

(ii) repayments of advances from the Fund under subparagraph (C); and

(iii) any interest earned on investment of amounts in the Fund under subparagraph (D).

(B) EXPENDITURES FROM FUND.—

(I) IN GENERAL.—On request by the Secretary, the Secretary of the Treasury shall transfer to the Secretary of Commerce $5,000,000 for each of fiscal years 1997 through 2003 to assist non-Federal property owners to carry out the terms of conservation reserve programs under this Act.

(II) AUTHORITY TO MAKE GRANTS AND ADVANCES.—The Secretary may make an interest-free advance from the Fund to any State, county, municipality, or other political subdivision of a State to assist in the development of a conservation plan under this subsection. The amount of the advance under this clause may not exceed the total financial contribution of the other parties participating in the development of the plan.

(III) CRITERIA FOR ADVANCES.—In determining whether to make an advance from the Fund, the Secretary shall consider—

(I) the number of species covered by the plan;

(II) the extent to which there is a commitment to participate in the planning process from a diversity of interests (including local governmental, business, environmental, and other interests);

(III) the likely benefits of the plan;

(IV) such other factors as the Secretary considers appropriate.

(C) REPAYMENTS OF ADVANCES FROM THE FUND.

(I) IN GENERAL.—Except as provided in clause (ii), amounts advanced from the Fund shall be repaid not later than 10 years after the date of the advance.

(II) ACCELERATED REPAYMENT.—Amounts advanced from the Fund shall be repaid not later than 5 years after the date of the advance.

(III) CREDITING OF REPAYMENTS.—Amounts received by the United States as repayment of advances from the Fund shall be credited to the Fund and made available for further advances in accordance with this paragraph without further appropriation.

(D) INVESTMENT FUND BALANCE.—

(1) The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary, required to meet current withdrawals under this subsection, in interest-bearing obligations of the United States.

(2) ACQUISITION OF OBLIGATIONS.—For the purpose of investing under clause (1), obligations may be acquired—

(I) on original issue at the issue price; or

(II) at the current market price.

(3) SALE OF OBLIGATIONS.—Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at market price.

(4) CREDITS TO THE FUND.—The interest on, and the proceeds from the sale or redemption of, obligations held in the Fund shall be credited to and form a part of the Fund.

(5) TRANSFERS OF AMOUNTS.—

(I) IN GENERAL.—Any obligations required to be transferred to the Fund under this paragraph shall be transferred at least monthly from the general fund of the Treasury to the Fund on the basis of estimates made by the Secretary of the Treasury.

(II) ADJUSTMENTS.—Proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(6) SALE OF OBLIGATIONS.—Any obligations held in the Fund shall be sold by the Secretary of the Treasury.

(7) HABITAT CONSERVATION PLANNING ASSISTANCE PROGRAM

(a) IN GENERAL.—Section 13 (16 U.S.C. 1542) is amended by adding at the end thereof the following new paragraph:

‘‘PROPERTY OWNERS EDUCATION AND TECHNICAL ASSISTANCE PROGRAM

‘‘SEC. 13. (a) IN GENERAL.—In cooperation with the States, the Secretary shall develop and implement a private landowners education and technical assistance program to—

1. Inform the public about this Act;

2. Respond to requests for technical assistance from property owners interested in conserving species listed or proposed for listing under section 4(c)(1) and candidate species on the land of the landowners;

3. Recognize exemplary efforts to conserve species on private land;

4. Publish educational materials and conduct workshops for property owners and other members of the public on the role of the Act in conserving endangered species and threatened species, the principal mechanisms of this Act for achieving species recovery, and potential sources of technical and financial assistance;

5. Assist field offices in providing timely advice to property owners on how to comply with this Act;

6. Provide technical assistance to State and local governments and property owners interested in developing and implementing recovery plan implementation agreements, conservation plans, and safe harbor agreements;

7. Serve as a focal point for questions, requests, and suggestions from property owners and local governments concerning policy and actions of the Secretary in the implementation of this Act;

8. Provide training for Federal personnel responsible for implementing this Act on conducting property owner/agency necessary conflicts, and improving implementation of this Act on private land;

9. Nominate for national recognition by the Secretary property owners that are exemplary managers of land for the benefit of species listed or proposed for listing under section 4(c)(1) or candidate species.

(b) ELEMENTS OF THE PROGRAM.—Under the program, the Secretary shall—

1. Establish educational materials and conduct workshops for property owners and other members of the public on the role of the Act in conserving endangered species and threatened species, the principal mechanisms of this Act for achieving species recovery, and potential sources of technical and financial assistance;

2. Assist field offices in providing timely advice to property owners on how to comply with this Act;

3. Provide technical assistance to State and local governments and property owners interested in developing and implementing recovery plan implementation agreements, conservation plans, and safe harbor agreements;

4. Serve as a focal point for questions, requests, and suggestions from property owners and local governments concerning policy and actions of the Secretary in the implementation of this Act;

5. Provide training for Federal personnel responsible for implementing this Act on conducting property owner/agency necessary conflicts, and improving implementation of this Act on private land;

6. Nominate for national recognition by the Secretary property owners that are exemplary managers of land for the benefit of species listed or proposed for listing under section 4(c)(1) or candidate species.

(c) CONFORMING AMENDMENT.—The table of contents in the first section is amended by striking the item related to section 13 and inserting the following:

‘‘Sec. 13. Private landowners education and technical assistance program.

(d) EFFECT ON PRIOR AMENDMENTS.—Nothing in this section or the amendments made by this section affects the amendments made by Section 13 of the Endangered Species Act of 1973 (37 State. 902), as in effect on the day before the date of enactment of this Act.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Section 15(a) (16 U.S.C. 1542(a)) is amended—

(1) in paragraph (1), by striking ‘‘and $41,500,000 for fiscal year 1992’’ and inserting ‘‘and $135,000,000 for fiscal year 1992, $150,000,000 for fiscal year 1993, $150,000,000 for fiscal year 1994, $150,000,000 for fiscal year 1995, and $165,000,000 for each of fiscal years 2000 through 2003’’;
(2) in paragraph (2), by striking "and $6,750,000" and inserting "and $6,750,000"; and
inserting "$10,000,000 for each fiscal year 1998, $60,000,000 for each fiscal year 1999, and $70,000,000 for each of fiscal years 2000 through 2003 after "and 1992"; and
(3) in paragraph (3), by striking "and $2,600,000" and inserting "and $2,600,000"; and
inserting "$1,000,000 for each of fiscal years 1998 through 2003" after "and 1992".
(b) EXEMPTIONS FROM ACT.—Section 15(b) (16 U.S.C. 1542(b)) is amended by inserting "and $1,000,000 for each fiscal year 1998 through 2003" after "and 1992".
(c) CONVENTION IMPLEMENTATION.—Section 15(c) (16 U.S.C. 1542(c)) is amended by striking "and $1,000,000 for each fiscal year 1998 through 2003 after "and 1992".
(d) ADDITIONAL AUTHORIZATIONS.—Section 15 (16 U.S.C. 1542) is further amended by adding the following at the end:
"(d) FINANCIAL ASSISTANCE FOR RARE HARBOR AGREEMENTS.—There are authorized to be appropriated to the Secretary of the Interior $10,000,000 and the Secretary of Commerce $5,000,000 for each of fiscal years 1998 through 2003 to carry out section 16(i).
(e) HABITAT CONSERVATION PLANNING FUND.—There are authorized to be appropriated to the Habitat Conservation Planning Fund established by section 10(a)(7) (16 U.S.C. 1535(i)) the following amounts for each of fiscal years 1998 through 2000 and $5,000,000 for each of fiscal years 2001 and 2002 to assist in the development of conservation plans.
(f) FINANCIAL ASSISTANCE FOR RECOVERY PLAN IMPLEMENTATION.—There are authorized to be appropriated to the Secretary of the Interior $30,000,000 and the Secretary of Commerce $15,000,000 for each of the fiscal years 1998 through 2003 to carry out section 5(1).
(g) AVAILABILITY.—Amounts made available under this subsection shall remain available until October 1, 2006.
(h) LIMITATION ON USE OF FUNDS.—Of the funds made available to carry out section 5 for any fiscal year, not less than $32,000,000 shall be available to the Secretary of Interior and not less than $13,500,000 to the Secretary of Commerce to implement actions to recover listed species. Of the funds made available to the Secretary of Interior and the Secretary of Commerce to implement actions to recover listed species, not less than 10% of those funds in each fiscal year for delisting species. If any of the funds made available by the Secretary of Interior and the Secretary of Commerce to implement actions to recover listed species are not needed in that fiscal year for delisting eligible species, those funds shall be available for listing.
(i) ASSISTANCE TO STATES FOR CONSERVATION ACTIVITIES.—Section 6(1) (16 U.S.C. 1535(a)(1)) is amended by adding at the end the following:
"(8) Assistance to States for Conservation Activities.—There are authorized to be appropriated to the Secretary of the Interior $15,000,000 for each of fiscal years 1998 through 2003 to provide financial assistance to States to carry out conservation activities under other sections of this Act, including the provision of technical assistance for the development and implementation of conservation measures for endangered species.
SEC. 9. OTHER AMENDMENTS.
(a) DEFINITIONS.—
(1) CANDIDATE SPECIES.—Section 3 is amended by inserting the following paragraph after paragraph (1) and redesignating the subsequent paragraphs accordingly:
"(2) CANDIDATE SPECIES.—The term 'candidate species' means a species for which the Secretary has insufficient information on biological vulnerability and threats to support a proposal to list the species as an endangered species or a threatened species, but for which listing is precluded because of pending proposals to list species that are of a higher priority. This definition shall not apply to any species defined as a 'candidate species' by the Secretary of Commerce prior to the date of enactment of the Endangered Species Recovery Act of 1997.''
(2) IN CONSERVATION MEASURES AND EXCEPTIONS.—Section 3 (16 U.S.C. 1532) is amended by inserting the following paragraph after paragraph (11) (as redesignated by this subsection):
"(12) Assistance to States.—The term 'in cooperation with the States' means a process in which—
"(A) the State agency in each of the affected States, or the State agency's representative, is given an opportunity to participate in a meaningful and timely manner in the development of the standards, guidelines, and regulations to implement the applicable provisions of this Act; and
"(B) the Secretary carefully considers all substantive concerns raised by the State agency, or the State agency's representative, and, to the maximum extent practicable consistent with this Act, incorporates their suggestions and recommendations, while retaining final decisional authority.''
(3) RURAL AREA.—Section 3(16 U.S.C. 1532) is amended by inserting the following new paragraph after paragraph (16) (as redesignated by this subsection and in section 4(a)) and redesignating the subsequent paragraphs accordingly:
"(17) RURAL AREA.—The term 'rural area' means a county or unincorporated area that has no city or town that has a population of more than 10,000 inhabitants.''
(4) COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.—Section 4(a) (16 U.S.C. 1532(a)) (as redesignated by this subsection and section 4(a)) is amended by striking "Trust Territories of the Pacific Islands" and inserting "Commonwealth of the Northern Mariana Islands".
(6) NO TAKE AGREEMENTS.—Section 9 (16 U.S.C. 1539) is amended by adding the following at the end of the section:
"(b) NO TAKE AGREEMENTS.—The Secretary shall enter into an agreement identifying activities of the property owner that will not result in a violation of the provisions of paragraphs (1)(B), (1)(C), and (2)(B) of section 9(a). The Secretary shall respond to a request for an agreement submitted by a property owner within 90 days of receipt.
(c) CONFORMING AMENDMENTS.—
(1) TITLE.—The title of section 10 (16 U.S.C. 1539) is amended to read as follows: "CONSERVATION MEASURES AND EXCEPTIONS.''
(2) TABLE OF CONTENTS.—The table of contents in the first section of the Act is amended to read as follows:
"Sec. 10. Conservation measures and exceptions."
Mr. CHAFEE. Mr. President, I am proud to sponsor, along with Senators KERRY and MURkowski, the Endangered Species Recovery Act of 1997, which reauthorizes the Endangered Species Act and makes some significant improvements to the act which are long overdue. The Endangered Species Act was enacted into law 24 years ago. Since then, funding for implementing the law has been provided through annual appropriations, which has left the future of the law on uncertain terms, and left the current working of the law subject to numerous appropriations riders, including a moratorium on the listing of species, that resulted in more than a year delay in affording protection to hundreds of species endangered with extinction.
The bill we introduce today includes many reforms. The last major amendment to the ESA was in 1988, almost 10 years ago. Since then, we have developed a greater knowledge of the science of biodiversity, a greater understanding of the problems in implementing the law on private lands, and in this era of shrinking government, a greater need for improved coordination among all levels of government. Our bill takes all this into account by focusing on several key areas: emphasizing recovery as the ultimate goal; enhancing our ability to prevent species from becoming endangered; improving the scientific foundation for decisions; increasing public participation and the role of States; facilitating compliance by, and providing incentives for, private landowners; and streamlining coordination among government agencies. In making these changes, our bill addresses the criticisms leveled against the ESA in recent years.
These criticisms have come from all directions. The environmental community believes that the law has failed in its fundamental mission to recover species to full health, but rather leaves species teetering on the razor’s edge of survival. The government bears this burden of approximately 1,000 species currently listed, 41 percent are either improving in status or stabilized, but only 8 percent are actually improving. Furthermore, less than half of the listed species have approved recovery plans.

Private landowners, on the other hand, believe that the ESA is fundamentally flawed in its implementation, with inflexible regulations, heavy-handed enforcement, closed-door science, and no consideration of economic costs. This, too, is largely borne out by the facts: the ESA has very few tools, other than enforcement of certain prohibitions against taking listed species, with which to protect species on private lands. This weakness in the law is heightened by the fact that more than one-third of all listed species reside entirely on private lands. Furthermore, species on private lands are faring worse than on public lands.

If the ESA is to succeed in its ultimate goal of recovering species, these problems must be addressed. Our bill does just that. Most importantly, it completely overhauls the recovery planning and implementation requirements of the ESA. Previously, recovery plans could be prepared to be up to 10 years with no deadline for doing so. Once prepared, they generally sat on the shelves with no requirement or incentive to implement them. Furthermore, the scientific findings in the plans were often compromised by political and economic considerations, nor was there any requirement to actually take cost of implementation into account.

This bill requires that recovery plans be completed within a specific deadline. The recovery goal must be developed by scientists, using only the best science available. While economic costs and social impacts must be taken into account and considered, they cannot be compromised by political and economic considerations.

Specifically, measure to achieve the recovery goal must strike an “appropriate balance” among three factors: the effectiveness in meeting the goal of the period of time needed to reach the goal;


The bill also improves significantly the law’s ability to work on private lands. Under the current law, the permitting process has generally been inflexible, cumbersome, and consequently rarely used. The Clinton administration has taken a number of new steps to encourage landowners to apply for permits in order to conduct economic activities that take listed species on their lands. As a result, the number of permits issued by the administration has increased from 14 in 1992 to more than 200 in 1997, with an additional 250 being developed. Our bill validates and expands these policies.

The bill provides for multiple species, including both listed and nonlisted species, that depend on the same habitat. New biological standards for nonlisted species ensure that permitted activities do not contribute to the need to list those species in the future. In order to address the needs of small landowners, a more streamlined, less expensive permitting process has been established for low-effect activities. Under this provision, landowners can apply for a permit automatically within a certain period, provided that there are no significant adverse comments.

In addition, the bill authorizes several policies and incentives to further encourage landowners to work with the Federal Government. These policies include a no-surprises guarantee that the Government will not seek additional mitigation over time; a safe harbor policy to encourage landowners to protect lands valuable to species without risking additional liability; and a candidate conservation policy, which encourages landowners to undertake protections for species before they become endangered or threatened. The bill also establishes several new funding mechanisms for incentive-based programs, including a habitat reserve program, and a habitat conservation planning fund, which can be loaned or used to provide technical assistance.

For the first time, the bill provides a requirement that Federal agencies enter into recovery implementation agreements, and also provides incentives for private persons to enter into similar agreements. These incentives include a waiver of certain consultation requirements under section 7 for actions that are described in sufficient detail. They also include a requirement that Federal agencies participate in the development of an agreement upon the request of a private person, so that the development of an agreement upon that Federal agencies participate in conservation actions.

The bill also provides for completion of the consultation process with no deadlines. This provision is based on the recommendation of the National Academy of Sciences, which stated that the law's ability to work on private lands is compromised by political and economic considerations.

Furthermore, the bill requires that Federal agencies undertake conservation actions within a specified time period, and that they provide technical assistance to landowners. The bill also authorizes new funding mechanisms for incentive-based programs, including an ESA revolving loan fund, which can be used to provide technical assistance.

The bill also provides for the development of a national inventory of species on Federal lands. This inventory will be used to identify species that are at risk, and to prioritize conservation actions.

Furthermore, the bill includes a provision to allow for the development of field tested or empirical data. This provision is important because it will ensure that recovery plans are based on the best available science, and that they are flexible enough to adapt to new information as it becomes available.

As you can see, Mr. President, this bill not only reauthorizes the ESA, but it also significantly improves the law, in order to embrace needed reforms in the current law. Numerous attempts to reauthorize the ESA have been made in recent years. The long and arduous effort culminating in today’s bill began more than 18 months ago, as a bipartisan process to address the problems with the current law. The discussions on the bill stalled, Senator KEMPThORNE and I spurred the process forward by releasing a discussion draft, which generated hundreds of comments. Since then, we have negotiated with Senators BAUCUS and REID, and the Clinton administration, to reach agreement on a bipartisan bill.

Just as the original ESA was passed by a Democratic Congress and signed into law by a Republican President, this bill to reauthorize the ESA is also a bipartisan product between a Republican Senate and a Democratic administration. It is a product of the work of the most ardent conservationists of our country, President Teddy Roosevelt, as well as his very able successor, Senator KEMPThORNE, and Senator BAUCUS, for their tireless work over the months on this important legislation, and I would like to thank the Secretary of the Interior, Bruce Babbitt, as well as his very able staff, including Assistant Secretary Clark, Director of the Fish and Wildlife Service, and Don Barry, Acting Assistant Secretary for Fish, Wildlife and
Parks, for their willingness to work with us in negotiating a bill that they can support.

Mr. BAUCUS. Mr. President, today, it is a real pleasure for me to join my colleagues on the Senate Environment and Public Works Committee, Senators CHAFEE, REID, and KEMPTHORNE in introducing the Endangered Species Recovery Act of 1997. The bill we are introducing today represents a real victory for bi-partisan, commonsense improvements to the Endangered Species Act.

The Endangered Species Act has been an important tool in our fight to conserve ecosystems and to prevent the extinction of species. But over the years, experience has shown that the act can be improved, both for the species it is designed to protect and for ranchers, farmers, and other private landowners.

Senators CHAFEE, REID, KEMPTHORNE, and I have been working, along with the administration, for the better part of 2 years, to secure agreement on changes that will improve the ESA on the ground, where it really counts.

The bill we are introducing today incorporates several major improvements to the ESA. Let me just reiterate a few that I think are particularly noteworthy.

First, it improves the use of good science in our decisions on listing species. It’s important that we elevate the role of scientific information in our decisions to put species on the endangered list. An error at this stage in the process can mean extinction for a species.

Second, the bill really turns the focus of the ESA to conserving and recovering species. It puts real deadlines on development of recovery plans and gives States a greater role in developing those plans. And it insists that we have benchmarks for measuring progress toward recovering the species.

For 18 months I have negotiated a settlement agreement on changes that will improve the ESA. I look forward to taking this bill to the committee and to the Senate floor.

By Mr. KEMPTHORNE:

S. 1181. A bill to amend the Internal Revenue Code of 1986 to provide Federal tax incentives to owners of environmentally sensitive lands to enter into conservation easements for the protection of endangered species habitat, to allow a deduction from the gross estate of a decedent in an amount equal to the value of real property subject to an endangered species conservation agreement, and for other purposes; to the Committee on Finance.

THE ENDANGERED SPECIES HABITAT PROTECTION ACT OF 1997

Mr. KEMPTHORNE. Mr. President, I am introducing legislation today which is intended to provide private property owners additional tools in their dealings with the Endangered Species Act. For both those who wish to participate in the conservation of land for the preservation of endangered, threatened, and endangered species, and those that wish to conserve their property, but whose participation is involuntary, this legislation will add to the already substantial means provided to property owners in the Endangered Species Recovery Act of 1997.

For too long the Federal Government has used its enforcement procedures and its regulatory authority to dictate conservation in aid of endangered and threatened species. This method has failed to produce the kind of results we want. The Endangered Species Act as currently written is almost all stick and no carrot. I would like to begin to change that today.

For 18 months I have negotiated a bill to reauthorize the Endangered Species Act with the Democrats and the administration. Those negotiations have been successfully completed. We have introduced a bill that will provide a variety of incentives to property owners to preserve habitat through conservation agreements and plans, preclusion agreements and other preservation tools. I also have a number of ideas on how to provide tax incentives to private property owners to preserve habitat.

Let me emphasize that inclusion of these new tax incentives will truly benefit both species and people. I have met with many property owners who have said, “we would be happy to step forward and preserve habitat for species and we would grant a conservation easement if there was an incentive.”

Well, with the exception of the ideas included in this bill there will be.

I have had critics that have said that we should not provide these kinds of incentives to private property owners because we will have too many people wanting to conserve endangered species on my land.”

What is wrong with that? To my mind, that would be a welcome reversal from the current prevailing attitude that some have about the presence of an endangered species on their property. Right now you have a situation that some land owners believe that if they do have an endangered species, or if it’s suggested that they might, they’re just going to try to get a system to avoid a problem down the road. We need to change that attitude if we’re going to recover endangered species.

We are currently at the crossroads of two systems. One where we have Government overregulation that tells people what they can and cannot do on their land, and the other a system that encourages property owners to step forward and do something good for species because it’s good for them too.

We can depend on our property owners to do what’s right and what’s good for species. I know that our farmers and ranchers know how to be innovative and creative. They know how to help species. And they know how to make a profit.

The right system is one where we encourage active involvement of landowners through incentives. Certainly, I know that if I were an endangered species, I would much rather have a friendly and willing partner that viewed me as an asset—than a reluctant one who viewed me as a threat and a liability because of some bureaucrats and regulations handed down from Washington, DC.

That is what this legislation will do. It is going to make the people active partners.

The legislation I am introducing also includes a provision designed to safeguard the property rights of individuals. The Endangered Species Recovery Act of 1997 will do much to improve and enhance the rights of property owners. The bill limits the ability of the Federal Government and environmental groups to restrict otherwise legitimate activities on private land under the law today, the Government and environmental groups have used the take prohibition to try to prohibit logging and development on private lands and a city’s pumping of an aquifer for drinking water, even where there was no scientific evidence that the activity would in fact harm an endangered species. Our bill will change that, reaffirming that the Federal Government, or an environmental group, has the burden of demonstrating that an activity will actually harm a species and they must meet that burden using real science, not just assumptions or speculation.

ESRA ’97 will protect the rights of property owners by making them a part of the process—a process that has excluded them for years. Now citizens, business people and State and local government representatives will be at the table for the development of recovery plans. Furthermore, the recovery provisions in the bill are neutral on the public and private sectors and the impact on jobs and property values for any recovery plan selected.
Under ERSA '97 we will substantially reduce the number of consultations under section 7 of the act. If a consultation is necessary under the act, property owners will have both a seat at the table and the information they need to meaningfully participate in the consultation.

Throughout ERSA '97 we have kept our bond with the property owners of Idaho and America. But there is always more that should be done.

The Endangered Species Habitat Protection Act contains strong property rights language. That language was developed in conjunction with some of the best minds in the property rights movement. Private property rights is a cornerstone of our democracy. As such it is incumbent on this Congress to address the issue in this Congress. The Endangered Species Habitat Protection Act contains my contribution to that effort.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Endangered Species Habitat Protection Act of 1997." 

(b) TABLE OF CONTENTS.—The table of contents for this Act as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Nonrefundable credit for the agreement to manage land to preserve endangered species.
Sec. 4. Enhanced deduction for the donation of a conservation easement.
Sec. 5. Additional deduction for certain State and local real property taxes imposed with respect to property subject to an endangered species conservation agreement.
Sec. 6. Exclusion from estate for real property subject to endangered species conservation agreement.
Sec. 7. Exclusion of gain on sales of land to certain persons for the protection of habitat.
Sec. 8. Right to compensation.

SEC. 2. FINDINGS.

The Senate finds and declares the following:

(1) The majority of American property owners value the importance of protecting the environment, including the habitats upon which endangered and threatened species depend.

(2) Current Federal tax laws discourage placement of privately held lands into endangered and threatened species conservation agreements.

(3) The Federal Government should assist landowners in the goal of conserving endangered and threatened species and their habitats.

(4) If the environment is to be protected and preserved, existing Federal tax laws must be modified or changed to provide tax incentives to landowners to attain the goal of conserving endangered and threatened species and the habitats on which they depend.

SEC. 3. NONREFUNDABLE CREDIT FOR THE AGREEMENT TO MANAGE LAND TO PRESERVE ENDANGERED SPECIES.

(a) IN GENERAL.—Subpart A of part IV of chapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to nonrefundable personal credits) is amended byinserting after section 25A the following new section: "SEC. 25B. CREDIT FOR AGREEMENT TO MANAGE LAND TO PRESERVE ENDANGERED SPECIES."

(b) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to—

(1) the applicable acreage rate of the qualified acreage, or

(2) $50,000.

(2) APPLICABLE ACREAGE RATE.—For purposes of subsection (a), the applicable acreage rate is the rate established by the Secretary of the Interior for the taxable year utilizing rates comparable to rental payments under the conservation reserve program under section 1234 of the Food Security Act of 1985 (16 U.S.C. 3834).

(c) QUALIFIED ACREAGE.—For purposes of this section, the term "qualified acreage" means any acreage—

(1) which is in contact to an endangered species conservation agreement under the Endangered Species Act (16 U.S.C. 1531 et seq.) and accepted into the expanded conservation reserve program pursuant to section 1234(d)(2) of the Food Security Act of 1985 (16 U.S.C. 3834(d)(2)),

(2) which is owned by one or more individuals directly or indirectly through a partnership or S corporation that is held entirely by individuals, and

(3) subject to a perpetual restriction that is valued pursuant to section 170(h)(7).

(d) CREDIT RECAPTURE.—If, during the period of the endangered species conservation agreement, the taxpayer transfers the qualified acreage without also transferring the taxpayer's obligations under the expanded conservation reserve program under section 1234(d)(2) (as in effect on August 1, 1997), then the taxpayer shall reduce the amount of the credit allowed under this section by the amount of the credit recaptured under section 1234(d)(2).

(e) QUALIFIED PERSON.—For purposes of this section, the term "qualified person" means—

(1) the taxpayer,

(2) the spouse of the taxpayer, or

(3) any other individual who is a joint owner of the property.

SEC. 4. ENHANCED DEDUCTION FOR THE DONATION OF A CONSERVATION EASEMENT.

(a) IN GENERAL.—Subsection (A) of section 170(h)(4) of the Internal Revenue Code of 1986 is amended by inserting "(4)(A)(ii)(I)" after "(4)(A)(ii)(II)" and inserting "(B)" after "(B)" in paragraph (4)(A) of section 170(h) of such Code.

(b) EFFECTIVE DATE.—

(1) CREDIT.—The amendments made by subsection (A) shall take effect on the date of enactment of this Act.

(2) CONFORMING AMENDMENTS.—The amendments made by subsection (B) shall apply to taxable years beginning after December 31, 1995.
SEC. 5. ADDITIONAL DEDUCTION FOR CERTAIN STATE AND LOCAL REAL PROPERTY TAXES IMPOSED WITH RESPECT TO PROPERTY SUBJECT TO AN ENDANGERED SPECIES CONSERVATION AGREEMENT.

(a) In general.—Section 164 of the Internal Revenue Code of 1986 (relating to deductions for real property taxes) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) Additional Deduction for Certain State and Local Property Taxes Imposed with Respect to Property Subject to an Endangered Species Conservation Agreement.—

"(1) General rule.—Except as provided in paragraph (3), in the case of property—

"(A) which, on the last day of the taxable year, bears the same ratio to the total area of the property as the total area of the property bears to the amount equal to the adjusted value of real property included in the gross estate which is subject to an endangered species conservation agreement, and

"(B) subject to a real property restriction by the Secretary of the Interior or the Secretary of Commerce, or

"(ii) a written agreement with the Secretary consenting to the application of subsection (d), and

"(B) the executor of the decedent’s estate—

"(i) elects the application of this section, and

"(ii) files with the Secretary such endangered species conservation agreement.

"(2) Adjusted value.—The adjusted value of any real property shall be its value for purposes of this section, reduced by any amount deductible under section 2053(a)(4) or 2056(f) with respect to the property.

"(c) Endangered Species Conservation Agreement.—For purposes of this section—

"(1) in general.—The term ‘endangered species conservation agreement’ means a written agreement entered into with the Secretary of the Interior or the Secretary of Commerce—

"(A) which commits each person who signed such agreement out on the real property activities or practices not otherwise required by law or to refrain from carrying out on such property activities or practices that could otherwise be lawfully carried out,

"(B) which is certified by such Secretary as assisting in the conservation of an endangered species which is—

"(i) designated by such Secretary as an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.),

"(ii) proposed for such designation, or

"(iii) officially identified by such Secretary as a candidate for such designation as an endangered or threatened species, and

"(C) which applies to at least one-half of the total area of the property.

"(2) Annual certification to the Secretary by the Secretary of the Interior or the Secretary of Commerce of the status of endangered species conservation agreements.—If the executor elects the application of this section, the executor shall promptly give written notice of such election to the Secretary of the Interior or the Secretary of Commerce. The Secretary of the Interior or the Secretary of Commerce shall thereafter annually certify to the Secretary that the endangered species conservation agreement applicable to any property for which such election has been made remains in effect and is being satisfactorily complied with.

"(d) Recapture of tax benefit in certain cases.—

"(1) Disposition of interest or material breach.—

"(A) in general.—Except as provided in paragraph (3), an additional tax in the amount determined under paragraph (2) shall be imposed on any person on the earlier of—

"(i) the disposition by such person of any interest in property subject to an endangered species conservation agreement (other than a disposition described in subparagraph (C)),

"(ii) the expiration of 3 years from the date the Secretary is notified (in such manner as the Secretary may by regulation prescribe) of the incurring of such tax liability, and

"(2) Such additional tax may be assessed before the expiration of 3 years from the date the Secretary is notified of such tax liability, notwithstanding the provisions of any other law or rule of law that would otherwise prevent such assessment.

"(3) Election and Filing of Agreement.—The election under this section shall be made on the return of the tax imposed by section 2001. Such election, and the filing under subsection (a) of an endangered species conservation agreement, shall be made in such manner as the Secretary shall by regulation provide.

"(4) Application of this section to interests in partnerships, corporations, and trusts.—The Secretary shall prescribe regulations setting forth the application of this section to interests in a partnership, corporation, or trust which, with respect to a decedent, is an interest in
a closely held business (within the meaning of paragraph (1) of section 1225(b)); for purposes of the preceding sentence, an interest in a discretionary trust all the beneficiaries of which are then or at any time during the decedent's lifetime shall be treated as a present interest."

(b) Carryover Basis.—Section 1014(a)(4) of the Internal Revenue Code of 1986 (relating to basic carryover property acquired by a decedent) is amended by inserting "or 2057" after "section 2031(c)".

(c) Clerical Amendment.—The table of sections for part IV of subchapter A of chapter 11 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

"Sec. 2057. Certain real property subject to section 2031(c)."

(d) Effective Date.—The amendments made by this section shall apply to estates of decedents dying after the date of the enactment of this Act.

SEC. 7. EXCLUSION OF 75 PERCENT OF GAIN ON SALES OF LAND TO CERTAIN PERSONS FOR THE PROTECTION OF HABITAT.

"(a) Exclusion.—Gross income shall not include 75 percent of any gain from the sale of any land to a conservation purchaser if—

(1) such land was owned by the taxpayer or a member of the taxpayer's family (as defined in section 2036(a)(3)) at all times during the 8-year period ending on the date of the sale, and

(2) such land is being acquired by a conservation purchaser for the purpose of protecting the habitat of any species listed by the Secretary of the Interior or the Secretary of Commerce under the Endangered Species Act as endangered or threatened, or for a candidate for such listing.

(b) Conservation Purchaser.—For purposes of this section—

(1) conservation purchaser.—The term "conservation purchaser" means—

(A) any agency of the United States or of any State or political subdivision thereof; and

(B) any qualified organization.

(2) qualified organization.—The term "qualified organization" has the meaning given to such term by section 170(b)(1)(A)(v)."

(b) Clerical Amendment.—The table of sections for part I of subchapter P of chapter 11 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

"Sec. 1203. 75 percent exclusion for gain on sales of land to certain persons for the protection of habitat."

(c) Effective Date.—The amendments made by this section shall apply to sales after December 31, 1986.

SEC. 8. RIGHT TO COMPENSATION.

(a) Prohibition.—No agency action affecting privately owned property under this section shall result in the diminishment of the value of such property by 30 percent or more unless compensation is offered in accordance with this section.

(b) Compensation for Diminishment.—Any agency action affecting the economic impact of which exceeds the amount provided in subsection (a)—

(1) shall compensate the property owner for the diminution in value of the portion of that property resulting from the action; or

(2) if the diminution in value of a portion of any land is 30 percent or more, shall compensate the property owner at the option of the owner, such agency shall buy that portion of the property and shall pay fair market value based on the value of the property before the action.

(c) Request of Owner.—A property owner seeking compensation under this section shall make a written request for compensation to the agency involved in the decision on which the property owner seeks compensation. The request shall include, at a minimum, the affected portion of the property, the nature and the amount of compensation claimed.

(d) Choice of Remedies.—If the parties have not resolved the compensation claim within 180 days after the written request is made, the owner may elect binding arbitration through alternative dispute resolution or seek compensation due under this section in a civil action. The parties may by mutual agreement extend the period of negotiation on compensation beyond the 180-day period without loss of remedy to the owner under this section. In the event the extension period lapses the owner may elect binding arbitration through alternative dispute resolution or seek compensation due under this section in a civil action.

(e) Alternative Dispute Resolution.—

(1) in general.—In the administration of this section—

(A) arbitration procedures shall be in accordance with the alternative dispute resolution procedures established by the American Arbitration Association; and

(B) in no event shall arbitration be a condition precedent or an administrative procedure to be exhausted before the filing of a civil action under this section.

(2) Review of Arbitration.—

(A) appeal of decision.—Appeal from arbitration decisions shall be to the United States District Court for the district in which the property is located or the United States Court of Federal Claims in the manner prescribed by law for the claim under this section.

(B) Rules of Enforcement of Award.—The provisions of title 9, United States Code relating to arbitration, shall apply to enforcement of awards rendered under this section.

(f) Civil Action.—An owner who prevails in a civil action against any agency pursuant to this section, and such agency shall be liable for, just compensation, plus reasonable attorney's fees and other litigation costs, including appraisal fees.

(g) Source of Payments.—Any payment made under this section shall be paid from the responsible agency's annual appropriation for the activities giving rise to the claim for compensation. If insufficient funds are available to the agency in the fiscal year in which the award becomes final that agency shall pay the award from appropriations available in the next fiscal year.

(h) Definitions.—For the purposes of this section—

(1) the term "agency" has the meaning given that term in section 551 of title 5, United States Code;

(2) the term "agency action" means any action or decision taken by any agency that at the time of such action or decision adversely affects private property rights;

(3) the term "fair market value" means the likely price at which property would change hands, in a competitive and open market under all conditions requisite to fair sale, between a willing buyer and seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts, prior to occurrence of the agency action;

(4) the term "just compensation"—

(A) means compensation equal to the full extent of the property taken, whether the taking is by physical occupancy or through regulation, exaction, or other means; and

(B) shall include compounded interest calculated from the date of the taking until the date the United States tenders payment;

(5) the term "owner" means the owner or possessor of property or rights in property at the time the taking occurs, including when—

(A) the statute, regulation, rule, order, guidance, policy, or action is passed or promulgated; or

(B) the permit, license, authorization, or governmental permission is denied or suspended;

(6) the term "property" means land, an interest in land, proprietary water rights, and any personal property that is subject to use by the Federal Government or to a restriction on use;

(7) the term "private property" or "property" means all interests constituting real property, as defined by Federal or State law, protected under the fifth amendment to the United States Constitution, any applicable Federal or State law, or this section, and more specifically constituting—

(A) real property, whether vested or unvested, including—

(i) estates in fee, life estates, estates for years, or otherwise;

(ii) inchoate interests in real property such as remainders and future interests;

(iii) personality that is affixed to or appurtenant to real property;

(iv) easements;

(v) leasesholds;

(vi) recorded liens; and

(vii) contracts or other security interests in, or related to, real property;

(B) the right to use water or the right to receive water, including any recorded liens on such water right;

(C) rents, issues, and profits of land, including minerals, timber, fodder, crops, oil and gas, coal, or geothermal energy.

By Ms. SNOWE (for herself, Mr. ABRAHAM and Mr. GRAMM).

S. 1182. A bill to amend the Congressional Budget and Impoundment Control Act of 1974 to limit consideration of nonemergency matters in emergency legislation and permit matter that is extraneous to emergencies to be stricken as provided in the Byrd rule; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, as modified by the order of April 11, 1986, with instructions that if one committee reports, the other committee shall have 30 days to report or be discharged.

THE EMERGENCY SPENDING CONTROL ACT

Ms. SNOWE. Mr. President, I rise today to introduce legislation that will end a common abuse of the budget process in the Congress: the attachment of nonemergency provisions to emergency spending bills. Senator ABRAHAM and Senator GRAMM are also original sponsors of this legislation.

At a time when Congress and the President have come together and agreed on a plan to balance the budget by the year 2002, I believe it is appropriate that we now seek to ensure that
all future spending decisions be fully weighed and considered before the tax dollars of hard-working Americans are spent. We must ensure that the costs and benefits of a proposal are thoroughly reviewed through our carefully structured budget process—not allowed to be sidetracked at the last minute. The legislation I am introducing today would address one of the ways in which spending programs are pushed through Congress with minimal budget scrutiny. Such a delay is simply not acceptable. 

Emergency or disaster. Such a delay is offset in an emergency spending bill, where all nonemergency spending items are included in an emergency spending bill, and the money is being spent on an emergency item. In addition, we waive our annual budgetary spending caps if the moneys are being spent to address an emergency or disaster. 

Because of their expedited treatment and budgetary exceptions, emergency spending bills have become a magnet for nonemergency items. Rather than subject the attachment of nonemergency provisones to emergency spending bills. 

Mr. President, as my colleagues know, emergency spending bills have been afforded special treatment because of the unique problems they address. While the annual budget and appropriations process typically takes months to complete, emergency spending legislation often receives special, accelerated consideration that can lead to its adoption in days or weeks. This expedited treatment is understandable: When a flood, earthquake, or other natural disaster imperils the lives and safety of the American people, Congress and the President should be ready and able to respond quickly.

We made special exceptions for emergency spending bills within our budgetary rules to ensure that disasters and other emergencies are quickly addressed. While we generally require that new spending be offset to prevent deficit increases, the Congress is forced to make a rapid decision. Delaying the process and carefully weighing these nonemergency items would also mean risking the timely delivery of assistance to those who have been affected by an emergency or disaster. Such a delay is simply not acceptable.

Mr. President, the bill I am introducing today would eliminate this problem and this practice by ensuring that all nonemergency spending items are subject to the same budget scrutiny and same budgetary rules. If my legislation is adopted, emergency spending bills would no longer be a convenient vehicle for spending money that is not needed. Rather, emergency spending bills would be just that: emergency spending bills—not Christmas trees with other goodies and presents tucked beneath them.

Under my bill, nonemergency provisions would be subject to a new three-fifths majority point of order. If a nonemergency item is included in an emergency spending bill or related conference report—or is contained in an amendment that is being offered to such a bill—this new point of order could be raised by any Member, and a three-fifths majority vote would be required to waive it.

I believe the Members of this body are familiar with the Byrd rule and its impact on the reconciliation process, and my new provision would be administered in much the same way. The only difference would be that the Byrd rule applies to budget reconciliation bills, this rule would apply to emergency spending bills.

Mr. President, we must no longer allow nonemergency items to be attached to emergency spending bills. We have created an expedited process for consideration of emergency spending bills for very sound reasons—but providing a vehicle for nonemergency items to be rushed through Congress was not one of them.

As we work toward a balanced budget in the year 2002, I would urge that Congress and the President carefully weigh the merits of every spending program and make priorities accordingly. My legislation would help us achieve this objective by ensuring that nonemergency items are not rushed through Congress while riding on the back of emergency spending bills. I urge that my colleagues join me in this effort and support this legislation.

ADDITIONAL COSPONSORS

S. 471 At the request of Mr. Kyl, the name of the Senator from Nevada [Mr. Reid] was added as a cosponsor of S. 471, a bill to amend title 18, United States Code.

S. 617 At the request of Mr. Johnson, the names of the Senator from Idaho [Mr. Kempthorne], the Senator from North Dakota [Mr. Conrad], and the Senator from Colorado [Mr. Campbell] were added as cosponsors of S. 617, a bill to amend the Federal Meat Inspection Act to require that imported meat, and meat food products containing imported meat, bear a label identifying the country of origin.

S. 766 At the request of Ms. Snowe, the name of the Senator from New York [Mr. Moynihan] was added as a cosponsor of S. 766, a bill to require equitable coverage of prescription contraceptive drugs and devices, and contraceptive services under health plans.

S. 834 At the request of Mr. Harkin, the name of the Senator from California [Mr. Boxer] from Senate Resolution 121, a resolution designating November 15, 1997, and November 15, 1998, as “America Recycles Day.”

S. 1173 At the request of Mr. Warner, the name of the Senator from Colorado [Mr. Campbell] was added as a cosponsor of S. 1173, a bill to authorize funds for construction of highways, for highway safety programs, and for mass transit programs, and for other purposes.

S. 1178 At the request of Mr. Levin, the names of the Senator from Hawaii [Mr. Inouye] and the Senator from Indiana [Mr. Lugar] were added as cosponsors of Senate Resolution 116, a resolution designating November 15, 1997, and November 15, 1998, as “America Recycles Day.”

S. 121 At the request of Mr. Specter, the names of the Senator from Arkansas [Mr. Hutchinson], the Senator from Missouri [Mr. Ashcroft], the Senator from Alabama [Mr. Shelby], the Senator from New York [Mr. D’Amato], the Senator from Ohio [Mr. DeWine], the Senator from Oklahoma [Mr. Inhofe], and the Senator from Kentucky [Mr. Ford] were added as cosponsors of Senate Resolution 121, a resolution urging the discontinuance of financial assistance to the Palestinian Authority unless the Palestinian Authority demonstrates a 100-percent maximum effort to curtail terrorism.
AMENDMENTS SUBMITTED

THE FOOD AND DRUG ADMINISTRATION MODERNIZATION AND ACCOUNTABILITY ACT OF 1997

PRESCRIPTION DRUG USERS Fee REAUTHORIZATION ACT OF 1997

KENNEDY AMENDMENT NO. 1190
(Ordered to lie on the table.)

Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill (S. 830) to amend the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act to improve the regulation of food, drugs, devices, and biological products, and for other purposes; as follows:

Amend section 406 to read as follows:

SEC. 406. LIMITATIONS ON INITIAL CLASSIFICATION DETERMINATIONS.

Section 510 (21 U.S.C. 350) is amended by adding at the end the following:

“(m) The Secretary may not withhold a determination of the initial classification of a device under section 513(f) because of a failure to comply with any provision of this Act that is unrelated to a substantial equivalence decision, including a failure to comply with requirements relating to good clinical practices under section 520(f), unless such failure could result in harm to human health from such device.”.

HATCH AMENDMENTS NOS. 1191–1192
(Ordered to lie on the table.)

Mr. HATCH submitted two amendments intended to be proposed by him to amendments intended to be proposed by the bill, S. 830, supra; as follows:

AMENDMENT No. 1191

At the end of the matter proposed to be inserted, insert the following:

SEC. 406. SAFETY REPORT DISCLAIMERS.

Chapter IX (21 U.S.C. 391 et seq.), as amended by section 804, is further amended by adding at the end the following:

“SEC. 406. SAFETY REPORT DISCLAIMERS.

“(a) With respect to any entity that submits or is required to submit a safety report or other information in connection with the safety of a drug (including a drug which is a food, drug, new drug, device, dietary supplement, or cosmetic) under this Act (and any release by the Secretary of that report or information), such report or information shall not be construed to necessarily reflect a conclusion by the entity or the Secretary that the report or information constitutes an admission that the product involved caused or contributed to an adverse experience, or otherwise caused or contributed to a death, serious injury, serious illness, or malfunction. Such an entity need not admit, and may deny, that the report or information submitted by the entity constitutes an admission that the product involved caused or contributed to an adverse experience or caused or contributed to a death, serious injury, serious illness, or malfunction.”.

AMENDMENT No. 1192

At the end of the matter proposed to be inserted, insert the following:

(d) MISSION STATEMENT.—Section 903(b), as amended by section 202, is further amended by striking paragraphs (1) and (2) and inserting the following:

“(1) IN GENERAL.—The Secretary, acting through the Commissioner, in consultation with experts in science, medicine, and public health, and in cooperation with consumers, user groups, manufacturers, importers, distributors, and retailers of regulated products, shall protect the public health by taking actions that help ensure that—

(A) foods are safe and wholesome, sanitary, and properly labeled;

(B) human and veterinary drugs, including biologicals, are safe and effective;

(C) there is reasonable assurance of safety and effectiveness of devices intended for human use;

(D) cosmetics are safe; and

(E) public health and safety are protected from electronic product radiation.

“(2) SPECIAL ADVISORY COUNCIL.—The Secretary, acting through the Commissioner, shall promptly and efficiently review clinical research and take appropriate action on the marketing of regulated products in a manner that does not unduly impede innovation or product availability. The Secretary, acting through the Commissioner, shall participate with other countries to reduce the burden of regulation, to harmonize regulatory requirements, and to achieve appropriate reciprocal arrangements with other countries.”.

HARKIN (AND OTHERS) AMENDMENT NO. 1193
(Ordered to lie on the table.)

Mr. HARKIN (for himself, Mr. HATCH, Mr. DASCHLE, and Ms. MIKULSKI) submitted an amendment intended to be proposed to an amendment intended to be proposed to the bill, S. 830, supra, as follows:

At the end of the amendment, insert the following new section:

SEC. 485C. PURPOSE OF CENTER.

“(a) IN GENERAL.—The general purposes of the National Center for Complementary and Alternative Medicine (in this subpart referred to as the ‘Center’) are—

(1) the conduct and support of basic and applied research (including both intramural and extramural research), research training, the dissemination of health information, and other programs, including prevention programs, with respect to identifying, investigating, and validating complementary and alternative treatment, prevention and diagnostic systems, modalities, and disciplines; and

(2) carrying out the functions specified in sections 485D (relating to dietary supplements).

The Center shall be headed by a director, who shall be appointed by the Secretary. The Director of the Center shall report directly to the Director of NIH.

(2) ADVISORY COUNCIL.—The Secretary shall establish an advisory council for the Center in accordance with section 406, except that the members of the advisory council who are not members shall include one or more practitioners from each of the disciplines and systems with which the Center is concerned, and at least 3 individuals representing at least 3 Federal programs, including prevention programs, with respect to identifying, investigating, and validating systems, modalities, and disciplines, and the Director of the Center shall conduct or support the following activities:

(I) Outcomes research and investigations.

(II) Epidemiological studies.

(III) Health services research.

(IV) Basic science research.

(V) Clinical trials.

(VI) Other appropriate research and investigational activities.

(3) DATA SYSTEM; INFORMATION CLEARGUARDIAN.—

(I) DATA SYSTEM.—The Director of the Center shall establish a bibliographic system for the collection, storage, and retrieval of worldwide research relating to complementary and alternative medical treatment and diagnostic systems, modalities, and disciplines. Such a system shall be regularly updated and publicly accessible.

(II) CLEARINGHOUSE.—The Director of the Center shall establish an information clearinghouse to facilitate and enhance through the effective dissemination of information, knowledge and understanding of alternative medical treatment and diagnostic systems and disciplines by health professionals, patients, industry, and the public.

(2) RESEARCH CENTERS.—

(I) IN GENERAL.—The Director of the Center, after consultation with the advisory council for the Center, shall provide support for the development and operation of multi-purpose centers to conduct research and other activities described in subsection (a)(1) with respect to complementary and alternative medical treatment and diagnostic systems, modalities, and disciplines.

(II) REQUIREMENTS.—

(A) Applications for support under paragraph (1) shall use the facilities of a single entity, or be formed from a consortium of cooperating entities, and shall meet such requirements as specified by the Director of the Center. Each such center shall—

(I) be established as an independent entity; or

(II) be established within or in affiliation with an entity that conducts research or training described in subsection (a)(1).

The requirements described in paragraph (1) shall be met by a center under paragraph (1) may be for a period not exceeding 5 years. Such period may
be extended for one or more additional peri-
ods not exceeding 5 years if the operations of
such center have been reviewed by an appro-
priate technical and scientific peer review
group designated by the Director of the Cen-
ter and if such group has recommended to
the Director that such period should be ex-
tended.

"(i) BIENNIAL REPORT.—The Director of the Cen-
ter shall prepare biennial reports on the ac-
tivities carried out or to be carried out by
the Center, and shall submit each such re-
port to the Director of NIH for inclusion in
the biennial report under section 403.

"(j) AVAILABILITY OF RESOURCES.—After con-
sultation with the Director of the Center,
the NIH shall ensure that resources of the Na-
tional Institutes of Health, including
laboratory and clinical facilities,
fellowships (including research training fel-
lowship and junior and senior clinical fellow-
ships), and other resources are sufficiently
available to enable the Center to appro-
priately and effectively carry out its duties
as described in subsection (a).

"(k) AUTHORIZATION OF APPROPRIATIONS.—
For the purpose of carrying out this subpart,
there are authorized to be appropriated such
sums as may be necessary for each of the fis-
cal years 1998 through 2002. Amounts appro-
priated under this subsection for fiscal year 1998
are available for obligation through Sep-
tember 30, 1998. Amounts appropriated under
this subsection for fiscal year 1999 are avail-
able for obligation through September 30, 2000.

SEC. 485D. OFFICE OF DIETARY SUPPLEMENTS.

"(a) IN GENERAL.—There is established
within the Center an office to be known as
the Office of Dietary Supplements (in this
section referred to as the 'Office'). The Office
shall be headed by a director, who shall be
appointed by the Director of the Center. The
Director of the Center shall carry out the
functions of this section acting through
the Director of the Office.

"(b) DUTIES.—

"(1) IN GENERAL.—The Director of the Of-

fice shall—

"(A) expand the activities of the national
research institutes with respect to the poten-
tial role of dietary supplements as a sig-
nificant part of the activities carried out or to be
carried out by the National Institutes of Health;
and
"(B) promote scientific study of the bene-

fits of dietary supplements in maintaining
health, the prevention of chronic disease and
other health-related conditions.

"(2) CERTAIN DUTIES.—The Director of the Of-

fice shall—

"(A) conduct and coordinate scientific re-

search within the National Institutes of Health
relating to dietary supplements and the extent to
which the use of dietary supple-
ments can limit or reduce the risk of dis-

eases such as heart disease, cancer, birth de-
fects, osteoporosis, cataracts, or prostatism;

"(B) collect and compile the results of scien-
tific studies pertaining to dietary supple-
ments, including scientific data from foreign
sources or other offices of the Center;

"(C) serve as the principal advisor to the Secretary and to the Assistant Secretary for Health and provide advice to the Director of NIH, the Director of the Centers for Disease Control and Prevention, and the Com-
mmissioner of Food and Drugs on issues relating
to dietary supplements including—

"(i) dietary intake regulations;

"(ii) the safety of dietary supplements;

"(iii) characterizing the relation-

ship between dietary supplements and the
prevention of disease or other health-related
conditions;

"(iv) systems characterizing the relation-

ship between dietary supplements and the
maintenance of health; and

"(v) scientific issues arising in connection
with the labeling and composition of dietary
supplements;

"(D) compile a database of scientific re-

search on dietary supplements and indi-

vidual nutrients and interact with dietary
supplements, including scientific data from foreign
sources or other offices of the Center;

"(E) coordinate funding relating to dietary
supplements for the National Institutes of
Health.

"(c) BIENNIAL REPORT.—The Director of the
Office shall prepare biennial reports on the ac-
tivities carried out or to be carried out by
the Office, and shall submit each such report
to the Director of the Center for inclusion in
the biennial report under section 485C(1).

"(d) DEFINITION.—For purposes of this sec-
tion, the term 'dietary supplement' has
the meaning given such term in section 201(ff) of
the Federal Food, Drug, and Cosmetic Act'.'

(b) SAVINGS PROVISIONS.—

(1) NATIONAL CENTER FOR COMPLEMENTARY
AND ALTERNATIVE MEDICINE.—All officers
and employees of the Office of Alter-
native Medicine on the day before the date of
the enactment of this Act (pursuant to sec-

tion 404E of the Public Health Service Act,
as in effect on such day) are transferred to
the National Center for Complementary and
Alternative Medicine. Such transfer does not
affect the status of any such officer or em-

ployee (except to the extent that the amend-
ments made by subsection (a) affect the au-
thority to make appointments to employ-
ment positions). All funds available on such
day for such Office are transferred to such
Center, and the transfer does not affect the
availability of funds for the purposes for
which the funds were appropriated (except
that such purpose shall apply with respect
to the Center to the same extent and in the
same manner as the purposes applied with
respect to the Office). All other legal
rights and duties with respect to the Office are
transferred to the Center, and continue in ef-
fact in accordance with their terms.

(2) OFFICE OF DIETARY SUPPLEMENTS.—With
respect to the Office of Dietary Supplements
established in section 485D of the Public
Health Service Act (as added by subsection
(a)), such establishment shall be construed
as in effect on such day) are transferred to
the National Center for Complementary and
Alternative Medicine from the Office of the Di-
rector of the National Institutes of Health
(in which the Office of Dietary Supplements
was located pursuant to section 485C of the
Public Health Service Act, as such section
was in effect on the day before the date of
the enactment of this Act). Such transfer
does not affect the status of any individual
as an officer or employee in the Office of Dier-
tary Supplements (except to the extent that
the amendments made by subsection (a) af-
flict the authority to make appointments to
employment positions), does not affect the
availability of funds of the Office for the pur-
poses for which the funds were appropriated,
and does not affect any other rights or duties
with respect to the Office.

(c) TECHNICAL AND CONFORMING AMEND-
MENTS.—Part A of title IV of the Public
Health Service Act (42 U.S.C. 281 et seq.),
as amended by subsection (a)—

(1) in section 401(b)(2), by amending sub-
paragraph (E) to read as follows:

"(E) The National Center for Complemen-
tary and Alternative Medicine;" and

(2) in section 404E by redesignating sub-
sections (g) through (k) as subsections (f)
through (j), respectively.

SEC. 701. AMERICAN HERITAGE RIVERS INITIAT-
IVE.

(a) IN GENERAL.—During fiscal year 1998
and each fiscal year thereafter, the President
and other officers of the executive branch
shall supplement the American Heritage Riv-
ers Initiative under Executive Order 13061 (62
Fed. Reg. 48445) only in accordance with this
section.

(b) DESIGNATION BY CONGRESS.—

(1) NOMINATIONS.—The President, acting
through the Chair of the Council on Environ-
mental Quality shall submit to Congress
nominations of the 10 rivers that are pro-
posed for designation as American Heritage
Rivers.
(2) PRIORITIZATION.—The nominations shall be subject to the prioritization process established by the Clean Water Act (42 U.S.C. 7401 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), and other applicable Federal law.

(3) CONSULTATION WITH PROPERTY OWNERS.—To ensure the protection of private property owners along a river proposed for nomination, all property owners holding title to land directly abutting river bank shall be consulted and asked to offer letters of support for or opposition to the nomination.

(3) DEFINITION OF RIVER COMMUNITY.—For the purposes of the American Heritage Rivers Initiative, as used in Executive Order 13061, the term “river community” shall include all persons that own property, reside, or regularly conduct business within 10 miles of the river.

CAMPBELL AMENDMENT NO. 1197
Mr. CAMPBELL proposed an amendment to the bill, H.R. 2107, supra; as follows:

On page 52 beginning on line 16, strike all through page 54, line 22, and insert in lieu thereof the following:

S. 118. Any funds made available in this Act or any other Act for tribal priority allocations (hereinafter in this section “TPA”) in excess of the funds expended for TPA in fiscal year 1997 (adjusted for fixed costs, internal transfers pursuant to other law, and proposed increases to formula driven programs not included in tribes’ TPA base,) shall only be available for distribution—

(1) to each Tribe to the extent necessary to provide that Tribe the minimum level of funding recommended by the Joint/Tribal/ BIA/DOI Task Force on Reorganization of the Bureau of Indian Affairs Report of 1994 (hereafter “the 1994 Report”) not to exceed $150,000 per Tribe; and

(2) to the extent funds remain, such funds will be allocated according to the recommendations of a Task Force comprised of two (2) representatives from each BIA area. These representatives shall be selected by the Secretary with the participation of the tribes following procedures similar to those used in establishing the Joint/Tribal/BIA/DOI Task Force on Reorganization of the Bureau of Indian Affairs. In determining the allocation of remaining funds, the Task Force shall consider the recommendations and principles contained in the 1994 Report. If the Task Force cannot agree on a distribution by January 31, 1998, the Secretary shall distribute the remaining funds based on the recommendations of a majority of Task Force members no later than February 28, 1998.

ABRAHAM AMENDMENTS NOS. 1198–1199
(Ordered to lie on the table.) Mr. ABRAHAM submitted two amendments intended to be proposed by him to the bill, H.R. 2107, supra; as follows:

AMENDMENT No. 1198
On page 17, line 8, strike “$167,694,000, to remain available until expended” and insert “$201,048,000, to remain available until expended,” of which $8,000,000 shall be transferred to the Smithsonian Institution and made available for restoration of the Star Spangled Banner, $8,000,000 shall be transferred to the National Endowment for the Humanities and made available for the preservation of papers of former Presidents of the United States that will be made available for the replacement of the wastewater treatment system at Mount Rushmore National Memorial, of which $2,000,000 shall be available for the stabilization of the hospital wards, crematorium, and immigrant housing on islands 2 and 3 of Ellis Island, and of which $5,000,000 shall be transferred to the Smithsonian Institution and made available for the preservation of manuscripts and original works of great American composers’.

On page 96, line 16, strike “$33,300,000” and insert “$55,533,000”.

On page 96, line 25, strike “$16,750,000” and insert “$11,175,000”.

At the end of title III, insert the following: S. 118. ‘‘Notwithstanding any other provision of law, not more than $10,044,000 of the funds appropriated for the National Endowment for the Arts under this Act may be available for private fundraising activities for the endowment.’’

AMENDMENT No. 1199
At the end of title III, insert the following: S. 118. ‘‘(a) Congress makes the following findings:

(1) The arts play an important part in American culture and should continue to be supported.

(2) The National Endowment for the Arts has been plagued by controversy by artists questioning the use of tax dollars for certain projects and by artists who fear their work will be censored.

(3) The formula funding for the arts has been increasing consistently since 1965 and the American people generously gave a record high $10,960,000,000 in 1996.

(4) Private funding for the arts has increased 40 percent during the same years that Federal funding for the arts decreased from $170,000,000 to $99,500,000.

(5) The National Endowment for the Arts contributes less than 5 percent of total Federal support for the arts and humanities.

(6) Local governments gave a total of $650,000,000 in the arts. The government spent a total of $250,000,000 in 1996 for the arts.

(7) The total receipts for performance arts events have increased and are quickly approaching the total receipts for spectator sports.

(8) One-third of direct National Endowment for the Arts grant funds go to 6 large cities. Those cities are New York, Boston, San Francisco, Chicago, Los Angeles, and Washington, D.C.

(9) One-fourth of direct National Endowment for the Arts grant funds go to multimillion dollar arts organizations.

(10) Americans volunteer approximately 2,600,000,000 hours a year, estimated to be worth $25,600,000,000 annually.

(11) The average household contribution (from households that do contribute to the arts) was $216 in 1996. This amount represents a 55 percent increase from 1993.

(12) Certain individuals feel there needs to be a national entity for the arts.

(b) It is the sense of the Senate that—

(1) the National Endowment for the Arts should continue to be phased out during 1998 and 1999.

(2) in 1998 and 1999, the National Endowment for the Arts should be considered for inclusion in the following: ‘‘Provided further, That the Secretary may provide such funds to the State of Florida for acquisitions within Stormwater Treatment Area 1-E, within which are in compliance with 25 U.S.C. 1701.

MURkowski AMENDMENT NO. 1201
Mr. GORTON (for Mr. MURkowski) proposed an amendment to the bill, H.R. 2107, supra; as follows:

S. 118. ‘‘(a) Priority of Bonds.—Section 3 of Public Law 94–392 (90 Stat. 1193, 1195) is amended—

(1) by striking ‘‘priority for payment’’ and inserting ‘‘a priority lien with every other issue of bonds or other obligations issued for payment’’;

and

(2) by striking ‘‘in the order of the date of issue’’.

(b) Application.—The amendments made by subsection (a) shall apply to obligations issued on or after the date of enactment of this section.

(c) Short-Term Borrowing.—Section 1 of Public Law 94–392 (90 Stat. 1190) is amended by adding the following subsection after the amendment at the end thereof:

‘‘The legislature of the government of the Virgin Islands may cause to be issued notes in anticipation of the collection of the taxes and revenues for the current fiscal year. Such notes shall be paid within one year from the date they are issued. No extension of such notes shall be valid and no additional notes shall be issued under this section until all notes issued during a preceding year shall have been paid.’’

GORTON (AND BYRD) AMENDMENTS NOS. 1202–1203
Mr. GORTON (for himself and Mr. BYRD) proposed two amendments to the bill, H.R. 2107, supra; as follows:

AMENDMENT No. 1202
On page 6, line 20, strike ‘‘Any’’ and insert in lieu thereof ‘‘The Federal share of’’.

AMENDMENT No. 1203
On page 32, beginning with the colon on line 13, strike all thereafter through ‘‘funds’’ on line 18 and insert in lieu thereof the following: ‘‘Provided further, That tribes may use tribal priority allocations funds for the replacement and repair of school facilities which are in compliance with 25 U.S.C. 2005(a) so long as such replacement or repair is approved by the Secretary and completed with non-Federal tribal and/or tribal priority allocations funds’’.  

"American Foundation for the Arts", where generous Americans can contribute their funds to a national arts entity that promotes the arts throughout the United States without the intrusion of the Federal government;
Persons interested in testifying or submitting material for the record should contact Betty Nevitt of the subcommittee staff at (202) 224–0765 or write to the Subcommittee on Water and Power, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Tuesday, September 16, 1997, at 10 a.m. in open session, to consider the nominations of Gen. Michael E. Ryan, USAF, to be Chief of Staff, U.S. Air Force; Adm. Harold W. Gehman, Jr., USN, to be Commander in Chief, U.S. Pacific Command; and Lt. Gen. Charles E. Wilhelm, USMC, to be commander in chief, U.S. Southern Command and for appointment to the grade of general.

The PRESIDING OFFICER. Without obligation, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, September 16, 1997, at 9:30 a.m. on intelligence and youth.

The PRESIDING OFFICER. Without obligation, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. JEFFORDS. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee Special Investigation to meet on Tuesday, September 16, 1997, at 10 a.m. for a hearing on campaign financing issues.

The PRESIDING OFFICER. Without obligation, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on: Tuesday, September 16, 1997, at 4 p.m. to hold a closed conference on the fiscal year 1998 Intelligence Authorization bill; Thursday, September 18, 1997 at 10 a.m. to hold an open hearing on Thursday, September 18, 1997 at 2:30 p.m. to hold a closed hearing on intelligence matters.

The PRESIDING OFFICER. Without obligation, it is so ordered.

ADDITIONAL STATEMENTS

INTERMODAL TRANSPORTATION ACT OF 1997

Mr. LEVIN. Mr. President, tomorrow, the Senate Committee on Environment and Public Works will conduct a markup of S. 1173, the Intermodal Transportation Act of 1997. It is time that a bill be reported to the Senate for thorough and careful consideration, as the expiration of ISTEA is only 2 weeks away. So far, we have very little information about the impact of this recently introduced bill. The committee's report to accompany the bill, and analyses from the U.S. Department of Transportation, should be very helpful to Senators in estimating the bill's merits. I look forward to reviewing that report in detail.

Some proponents of the bill say that States will be guaranteed 90 percent of their contributions into the highway trust fund. There were statements like this just before ISTEA was enacted, and which never materialized, so my colleagues will understand if I reserve judgment. The committee, with the help of the Federal Highway Administration, will hopefully show us that that 90 percent is actual. For the moment however, the information available now should concern all donor States.

According to technical assistance provided by the U.S. Department of Transportation, it seems that paying for a 90 percent of contributions guarantee would cause the ITA bill to exceed the amount allotted in the 5-year budget agreement by approximately $10.059 billion. Yet, committee staff have indicated that the bill is just within the budget targets. There seems to be a contradiction there somewhere.

According to general information provided thus far by the committee, estimating the State-by-State average return from ITA, Michigan would see about $696 million annually over 6 years. However, according to Federal Highway Administration projected gas tax receipts, Michigan will contribute and would receive the following at a 90 percent guaranteed rate of return on contributions:

| Fiscal years |
|-------------|-----------|-----------|-----------|-----------|-----------|-----------|
| 1998        | 1999      | 2000      | 2001      | 2002      | 2003      |
| Budg. Auth. to get 90% of Contrib | +2.924 | +2.584 | +2.456 | +2.456 | +2.456 | +2.456 |
| Difference | --- | --- | --- | --- | --- | --- |

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and the public that an oversight hearing on the Federal agency energy management provisions of the Energy Policy Act of 1992, has been scheduled before the full Committee on Energy and Natural Resources.

The hearing will take place Thursday, September 25, 1997, at 9:30 a.m., in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

For further information, please call Karen Hansicker, counsel to the committee, at (202) 224–3543 or Betty Nevitt, staff assistant at (202) 224–0765.

COMMITTEE ON WATER AND POWER

Mr. KYL. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Subcommittee on Water and Power of the Committee on Energy and Natural Resources to receive testimony on various measures pending before the subcommittee. The measures are:

S. 725—To direct the Secretary of the Interior to convey the Colbijn Reclamation Project to the Ute Water Conservancy District and the Colbijn Conservation District;

S. 777—To authorize the construction of the Lewis and Clark Rural Water System and to authorize assistance to the Lewis and Clark Rural Water System, Inc., a nonprofit corporation, for the planning and construction of the water supply system, and for other purposes;

H.R. 848—To extend the deadline under the Federal Power Act applicable to the construction of the AuSable hydroelectric project in New York, and for other purposes;

H.R. 1184—To extend the deadline under the Federal Power Act for the construction of the Bear Creek hydroelectric project in the State of Washington, and for other purposes; and

H.R. 1217—To extend the deadline under the Federal Power Act for the construction of a hydroelectric project in the State of Washington, and for other purposes;

The hearing will begin at 2 p.m. on Tuesday, October 7, 1997, in room SD–366 of the Dirksen Senate Office Building in Washington, DC.
So, the question is whether the return to Michigan under a bill that provides a true guarantee of 90 percent of contributions would be about $931 million. That is about $230 million more annually than the committee's estimate. What's the explanation? It is not yet clear.

I would like to support a transportation authorization bill that treats States fairly. Unfortunately, there is insufficient information available right now to make that assessment. I am concerned about what I have learned about the bill. I strongly encourage the committee or the Department to provide Senators, as soon as possible, with charts showing the likely apportionments and allocations that each State can expect for each year for the life of the bill, including information on the actual average return that each State can expect in terms of total obligation authority, assuming USDOT's gas tax receipts projections and the balanced budget agreement levels for transportation.

Mr. President, though I am generally pleased that the committee is proposing to modernize the factors in the basic allocation formula to do away with postal routes and other obsolete factors, I was dismayed to learn that S. 1172 would add a convoluted and highly suspect payment to States that seem to receive special treatment. I am referring to the ISTEA transition payments. I strongly urge the committee members to strike this unnecessary and unfair provision during markup.

There are many questions that need to be answered about that provision. For instance, are these ISTEA transition payments subject to an obligation limitation? Can they grow over time? Shouldn't the fiscal year 1997 basis used in calculating these transition payments be the authorized amount and not as amended in a supplemental appropriation bill?

Mr. President, I would like to support a fair bill to reauthorize our Nation's transportation systems. This bill holds some promise, but there are too many unanswered questions at this point to make a final conclusion.

TRIBUTE TO THE PROCTOR MAPLE RESEARCH CENTER

- Mr. JEFFORDS. Mr. President, I rise today to pay tribute to the Proctor Maple Research Center in Underhill Center, VT on the occasion of its 50th anniversary. It is the oldest maple research facility in the country with a mission that embraces research, demonstration, and education.

The center employs basic, as well as, applied research in studying various aspects of the sugar maple tree, its products and methods to improve syrup production. In addition, the facility monitors long-term meteorological as well as air pollution data in close cooperation with a number of State and Federal agencies. Operations on site demonstrate the latest technologies from which the public and industry can learn the best methods available for manufacturing. The center's state-of-the-art laboratory promotes crucial communication among researchers.

Over the years, research conducted at the center has provided new techniques for efficient sap collection and evaporation systems. It has, and will continue to play an integral role in the success of our region's maple sugar industry so very critical to the local economy.

I am sure that the impact of work completed at the center is realized not only in New England, but across the country and beyond the pleasure of tasting the fruits of their labor. As a Vermonter and one of millions of Americans that enjoys maple sugar products each year, I would like to extend my best wishes to the Proctor Maple Research Center for many more years of continued success.

FAREWELL TO HIS EXCELLENCY RAUL ENRIQUE GRANILLO OCAMPO, DEPARTING ARGENTINE AMBASSADOR TO THE UNITED STATES

- Mr. DODD. Mr. President, I rise today in order to pay a special tribute to Ambassador Raul E. Granillo Ocampo, until recently the Government of Argentina's Ambassador to the United States. Ambassador Ocampo left Washington last month to return to Buenos Aires and another challenging assignment from President Menem. During his nearly 4 years in Washington, Ambassador Ocampo did a superb job representing his country's interests. He understood well what it takes to be an effective diplomat in Washington. Not only did he develop close working relationships with the State Department and the White House on matters of mutual concern to the United States and Argentina, he also made a special effort to establish close ties with the United States Congress.

The United States-Argentina relationship has never been better. I believe that Ambassador Ocampo can take a good deal of the credit for this. Certainly issues between our two countries would arise from time to time. That is only natural. But, thanks to Ambassador Ocampo's diplomatic skills, such issues were never allowed to undermine our fundamental friendship and mutual respect.

Those of us who had the privilege of knowing Ambassador Ocampo, quickly recognized and appreciated his special talents. So too did President Menem. Hence, it came as no real surprise when in July, President Menem announced the appointment of Ambassador Ocampo to the post of Minister of Justice—a very important position in his government. That is why Ambassador Ocampo has returned to Argentina.

Knowing something about Ambassador Ocampo's background, it makes perfect sense to me that he would be selected to become Minister of Justice. Not only does he have a law degree from the National University of La Plata, a master's degree in Comparative International Law from Southern Methodist University, Dallas, TX; and a doctorate in law from the National University of Buenos Aires. He has also served as law enforcement, served as a judge on the Superior Court of the Province of La Rioja, and as the president, or chief judge, for that court for 2 years.

I hope I am only grateful that I had the opportunity to get to know Ambassador Ocampo personally during his tenure in Washington. Thanks to him, I have a much better understanding and appreciation of the complexities of the relations between our two countries. And, an important one at that. I hope we can maintain those close ties.

Before the August recess, I was able to personally bid farewell to Ambassador Ocampo and his charming wife, Chini. However, I also wanted to say a more formal farewell to him as well. I particularly wanted him to know that we in the U.S. Senate have been enriched by his presence in Washington over these last number of years.

Finally, Mr. President, it is only fitting that as we say goodbye to an old friend, we also prepare to welcome a new one. President Menem has chosen as Ambassador Ocampo's replacement, His Excellency Diego Ramiro Guelar, who just recently presented his credentials to President Clinton.

Although I have not yet had the opportunity to meet Ambassador Guelar, I understand that he is both an experienced diplomat and an experienced politician—he has held a number of ambassadorial posts and has been a Representative in the Argentine Congress. I look forward to meeting Ambassador Guelar in the very near future, and to working with him as I did with his predecessor.

INTEL

- Mr. DOMENICI. Mr. President, Intel is the epitome of a good corporate citizen. During the August recess I was cruet and so the annual good deed performed by Intel. Intel has a large semiconductor manufacturing plant located in Rio Rancho, NM. It is a big
employer and it provides good paying jobs. Rio Rancho didn’t have a high school so Intel decided to build the community one. Some 1,900 students will attend this beautiful new 30 million-dollar facility. This is exciting for the community because the high schoolers will no longer have to leave Rio Rancho to attend high school. It is a special kind of home coming.

New Mexico is lucky to have Intel as a member of its community. Rio Rancho would have eventually built a high school, but Intel made it happen sooner.

Also of significance is what will be going on inside this high school. Intel has been very active in working with voc-ed programs so that students are trained for the jobs available at Intel. It starts in the high schools and continues in the technical schools, community colleges, and universities. As job requirements change at Intel, the company has a rigorous job training program at Intel Tech. Like my House counterparts, I fear OMB may not have the time or the resources to handle this issue.

In 1997, fearing the private sector’s lagging awareness, I realized that perhaps a task force could increase awareness in the private sector while ensuring compliance in the public sector. Thus I introduced a first day bill, S. 22, to address this matter through a special task force to oversee the Federal Government’s handling of the year 2000 problem. In this morning’s Federal Page of the Washington Post, a story entitled ‘‘Year 2000’’ Report Flunks 3 Agencies’’ reports that ‘‘three house Republicans called on President Clinton to appoint a special aide to tackle the computer problem.’’ In July 1996, I wrote the President and proposed the creation of just such a ‘‘Y2K czar.’’ But the administration is still confident that the Office of Management and Budget can handle the job. Like my House counterparts, I fear OMB may not have the time or the resources to handle this issue.

In 1997, fearing the private sector’s lagging awareness, I realized that perhaps a task force could increase awareness in the private sector while ensuring compliance in the public sector. Thus I introduced a first day bill, S. 22, to address this matter through a special task force. S. 22 is cosponsored by 16 Senators and has been endorsed by the New York Stock Exchange [NYSE]. The enormity of this problem demands a task force of experts to ensure compliance. I hope my colleagues agree.

I argue that ‘‘Year 2000’’ Report Flunks 3 Agencies from today’s Washington Post be printed in the Record.

The material follows:

[From the Washington Post, Sept. 16, 1997]

‘‘Year 2000’’ Report Flunks 3 Agencies—Lawmakers Urgo Special Aide to Handle Looming Computer Problem

(By Stephen Barr)

A congressional report card flunked three federal agencies and faulted several others yesterday for moving too slowly on fixing potential ‘‘year 2000’’ computer glitches. Rep. Stephen Horn (R-Calif), who oversees information technology issues in the House, issued the report card at the end of a two-and-a-half hour hearing where he was joined by Reps. Thomas M. Davis III (R-Va.) and Constance A. Morella (R-Md.). The three House Republicans called on President Clinton to appoint a special aide to tackle the computer problem.

‘‘Most agencies are behind schedule,’’ Horn said. ‘‘The problem, of course, is that we do not know which programs will fail, what problems their failures will create, and how disastrous will be the consequences.’’

Most lawmakers use a two-digit dating system that assumes 1 and 9 are the first two digits of the year. Without specialized reprograming, the system will think the year 2000—or 00—is 1900, a glitch that could cause most to go haywire.

If government systems are not fixed, malfunctions could jeopardize the tax-processing system, payments to veterans with service-connected disabilities, student loan repayments and perhaps even air traffic control.

Horn issued his grades on the same day the Office of Management and Budget delivered a report to Congress that reflected a more aggressive stance by OMB is dealing with the problem. The OMB report said agencies estimate they will spend $3.6 billion fixing the year 2000 problem.

OMB put four agencies on notice that they will not be allowed to buy new computer and information systems until the problems are fixed. The funding restriction, however, will be lifted if agencies can justify the need for new equipment or show sufficient progress on the year 2000 problem.

‘‘I have a high degree of confidence there will be no major annual calendar sequences flowing from this decision,’’ said Sally Katzen, OMB’s administrator for information and regulatory affairs. But, she added, OMB’s increased scrutiny will ‘‘reestablish priorities for these agencies.’’

The agencies on OMB’s troubled list are the departments of Agriculture, Transportation and Education and the Agency for International Development. On its report card, Horn flunked Education, Transportation and AID and gave Agriculture a D-minus.

Agency officials expressed confidence yesterday that they would make their year 2000 fixes before the Jan. 1, 2000, deadline. The pointed out that the OMB report and Horn’s grades represented an August snapshot that does not reflect recent decisions to repair or replace computers.

At the Agriculture Department, Secretary Dan Glickman has issued a five-point plan to address year 2000 problems, officials said. An AID official said the agency has narrowed its 280 critical software problems to 19 and will name a special task force to oversee the computer situation. Morella said Katzen, who oversees regulatory affairs across the government, has done a ‘‘good job’’ on year 2000 policy but contended ‘‘they need someone for whom this is a full-time job.’’

Katzen said she ‘‘very respectfully disagreed that a new bureaucracy is the way to go. . . . This is an issue in which the agencies themselves have to do the work and it is up to them to make sure our responsibility and accountability.’’

REPORT CARD

[Federal agencies were graded on their progress toward addressing year 2000 computer problems—and given a place to have the report cards signed]

Agency Grade

Social Security Administration F

General Services Administration C

National Science Foundation B

Small Business Administration D

Department of Health and Human Services A

Environmental Protection Agency D

Federal Emergency Management Agency C

Department of Housing and Urban Development A

Department of Interior D

Department of Labor D

Department of State A

Department of Veterans Affairs A

Department of Commerce A

Department of Energy D

Department of Justice D

Nuclear Regulatory Commission D

Office of Personnel Management A

Department of Agriculture B

Office of Management and Budget D

Department of Treasury B

NASA B

Agency for International Development D

Department of Education B

Department of Transportation D

Source: House subcommittee on government management, information and technology.
which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. FINDINGS. Congress finds that—

(1) open space near Grand Teton National Park continues to decline;

(2) the property continues to grow in Teton County, Wyoming, undeveloped land near the park becomes more scarce;

(3) the loss of open space around Grand Teton National Park affects impacts on wildlife migration routes in the area and on visitors to the park, and its repercussions can felt throughout the entire region;

(4) the ranches depend on open, and the ranches depend on grazing in Grand Teton National Park for summer range to maintain operations;

(5) the Act that created Grand Teton National Park allowed several permits to continue livestock grazing in the park for the life of a designated heir in the family;

(6) some of the last remaining heirs have died, and as a result of the possible termination of ranching, the open space around the park may likely be developed;

(7) in order to develop the best solution to protect open space immediately adjacent to Grand Teton National Park, the National Park Service, the public, local government, and landowners in the area.

SEC. 2. STUDY OF GRAZING USE AND OPEN SPACE. (a) IN GENERAL.—The Secretary of the Interior (hereinafter referred to as the “Secretary”), shall conduct a study concerning grazing use and open space in Grand Teton National Park, Wyoming (referred to as the “park”), and associated use of certain agricultural and ranch lands within and adjacent to the park, including—

(1) base land having appurtenant grazing privileges within the park, remaining after January 1, 1990, under the Act entitled “An Act to establish a new Grand Teton National Park in the State of Wyoming, and for other purposes”, approved September 14, 1950 (16 U.S.C. 406–1 et seq.); and

(2) any ranch and agricultural land adjacent to the park, the use and disposition of which may affect accomplishment of the purposes of the park’s enabling Act.

(b) SCOPE.—The study shall—

(1) assess the significance of the ranching use and pastoral character (including open vistas, wildlife habitat, and other public benefits) of the land;

(2) assess the significance of that use and character to the purposes for which the park was established and identify any need for preservation of, and practicable means of preserving, the land that is necessary to protect that use and character; and

(3) consider factors of economically feasible and viable tools and techniques to retain the pastoral qualities of the area, and estimate the costs of implementing any recommendations made for the preservation of the land.

(c) PARTICIPATION.—In conducting the study, the Secretary shall consult with the Governor of the State of Wyoming, the Teton County Commissioners, the Secretary of Agriculture, affected landowners, and other interested members of the public.

(d) TIME LIMIT.—Not later than 3 years from the date funding is made available, the Secretary shall submit a report to Congress that contains the findings of the study under subsection (a) and recommendations to Congress in regard to any action that may be taken with respect to the land described in subsection (a).

SEC. 3. EXTENSION OF GRAZING PRIVILEGES. (a) IN GENERAL.—Subject to subsection (b), the Secretary shall reinstate and extend for the duration of the study described in section 2(a) and until such time as 6 months after the recommendations of the study are submitted, the grazing privileges described in section 2(a)(4), under the same terms and conditions as were in effect prior to the enactment of this Act.

(b) EFFECT OF CHANGE IN LAND USE.—If, during the period of the study or until 6 months after the recommendations of the study are submitted, any portion of the base land prescribed in section 2(a)(1) is disposed of in a manner that would result in the land no longer being used for ranching or other agricultural purposes, the Secretary shall cancel the extension described in subsection (a).

The amendment was agreed to.

The bill, as amended, was ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 931

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Marjory Stoneman Douglas Wilderness and Ernest F. Coe Visitor Center Designation Act”.

SEC. 2. FINDINGS. (a) FINDINGS.—Congress finds that—


(B) Mrs. Douglas’ book was the first to stimulate widespread understanding of the Everglades ecosystem and ultimately served to awaken the desire of the people of the United States to restore the ecosystem’s health;

(C) in her 107th year, Mrs. Douglas is the sole surviving member of the original group of people who devoted decades of selfless effort to establish the Everglades National Park;

(D) Mr. Coe’s original park proposal in 1934; and

(E) Mr. Coe’s leadership, selfless devotion, and commitment to achieving his vision culminated in the authorization of the Everglades National Park by Congress in 1984;

(ii) after authorization of the park, Mr. Coe fought tirelessly andlobbed strenuously for establishment of the park, finally realizing his dream in 1974; and

(iii) Mr. Coe accomplished much of the work described in this paragraph at his own expense, which dramatically demonstrated his commitment to establishment of Everglades National Park.

(b) PURPOSE.—It is the purpose of this Act to commemorate the vision, leadership, and enduring contributions of Marjory Stoneman Douglas and Ernest F. Coe to the protection of the Everglades and the establishment of Everglades National Park.

SEC. 3. MARJORY STONEMAN DOUGLAS WILDERNESS AND ERNEST F. COE VISITOR CENTER DESIGNATION ACT.

The bill, as amended, was ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 931

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Marjory Stoneman Douglas Wilderness and Ernest F. Coe Visitor Center Designation Act”.

SEC. 2. FINDINGS. (a) FINDINGS.—Congress finds that—

(1)(A) Marjory Stoneman Douglas, through her book, “The Everglades: River of Grass” (published in 1947); and

(B) Mrs. Douglas’ book was the first to stimulate widespread understanding of the Everglades ecosystem and ultimately served to awaken the desire of the people of the United States to restore the ecosystem’s health;

(C) in her 107th year, Mrs. Douglas is the sole surviving member of the original group of people who devoted decades of selfless effort to establish the Everglades National Park;

(D) when the water supply and ecology of the Everglades collapsed and outside the park became threatened by drainage and development, Mrs. Douglas dedicated the balance of her life to the defense of the Everglades through extraordinary personal effort and by inspiring countless other people to take action;

(E) for these and many other accomplishments, the President awarded Mrs. Douglas the Medal of Freedom on Earth Day, 1994; and

(2)(A) Ernest F. Coe (1886–1951) was a leader of the Florida’s Everglades, becoming threatened by drainage and development, Mrs. Douglas dedicated the balance of her life to the defense of the Everglades through extraordinary personal effort and by inspiring countless other people to take action;

(B) Mrs. Coe organized the Tropic Everglades National Park Association in 1928 and was widely regarded as the father of Everglades National Park;

(C) as a landscape architect, Mr. Coe’s vision for the park recognized the need to protect not only Florida’s Everglades, but other wildlife and habitats for future generations;

(D) Mr. Coe’s original park proposal included lands and waters subsequently protected within the Everglades National Park, the Big Cypress National Preserve, and the Florida Keys National Marine Sanctuary; and

(E)(i) Mr. Coe’s leadership, selfless devotion, and commitment to achieving his vision culminated in the authorization of the Everglades National Park by Congress in 1984;

(ii) after authorization of the park, Mr. Coe fought tirelessly andlobbed strenuously for establishment of the park, finally realizing his dream in 1974; and

(iii) Mr. Coe accomplished much of the work described in this paragraph at his own expense, which dramatically demonstrated his commitment to establishment of Everglades National Park.

(b) PURPOSE.—It is the purpose of this Act to commemorate the vision, leadership, and enduring contributions of Marjory Stoneman Douglas and Ernest F. Coe to the protection of the Everglades and the establishment of Everglades National Park.

SEC. 4. ERNEST F. COE VISITOR CENTER.

(a) DESIGNATION.—Section 103 of the Everglades National Park Protection and Expansion Act of 1989 (16 U.S.C. 4107b) is amended by striking “Marjory Stoneman Douglas Wilderness and Ernest F. Coe Visitor Center” and inserting “Marjory Stoneman Douglas Wilderness and Ernest F. Coe Visitor Center”.

(b) NOTICE OF REDESIGNATION.—The Secretary of the Interior shall provide such notice of the redesignation made by the amendment made by subsection (a) by signs, materials, maps, markers, interpretive programs, and other means (including changes in signs, materials, maps, and markers in existence before the date of enactment of this Act) as will adequately inform the public of the redesignation of the wilderness area and the reasons for the redesignation.

(c) REFERENCES.—Any reference in any law, regulation, document, record, map, or other paper of the United States to the “Marjory Stoneman Douglas Wilderness” shall be deemed to be a reference to the “Marjory Stoneman Douglas Wilderness”.

SEC. 5. CONCLUSION AND TECHNICAL AMENDMENTS.

(a) CONCLUSION.—The bill (S. 931) to designate the Marjory Stoneman Douglas Wilderness and Ernest F. Coe Visitor Center, was read the third time, considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 931

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
AMENDING TITLE II OF THE HYDROGEN FUTURE ACT OF 1996

The bill (S. 965) to amend title II of the Hydrogen Future Act of 1996 to extend an authorization contained therein, and for other purposes, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 965

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF AUTHORIZATION OF APPROPRIATIONS.


TRINITY LAKE DESIGNATION ACT

The bill (H.R. 63) to designate the reservoir created by Trinity Dam in the Central Valley project, California, as “Trinity Lake,” was considered, ordered to a third reading, read the third time, and passed.

COMMENDING DR. HANS BLIX AS DIRECTOR GENERAL OF THE INTERNATIONAL ATOMIC ENERGY AGENCY

Mr. KEMPThorne. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 130, Senate Concurrent Resolution 45.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The bill clerk read as follows:

A concurrent resolution (S. Con. Res. 45) commending Dr. Hans Blix for his distinguished service as Director General of the International Atomic Energy Agency on the occasion of his retirement.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. KEMPThorne. Mr. President, I ask that the resolution and preamble be agreed to, en bloc, and the motion to reconsider be laid upon the table, and that any statements relating to the concurrent resolution be placed in the Record at the appropriate place.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (S. Con. Res. 45) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, is as follows:

S. Con. Res. 45

Whereas Dr. Hans Blix is nearing the completion of 16 years of distinguished service as Director General of the International Atomic Energy Agency and is retiring from that position;

Whereas Director General Blix has pursued the fundamental safeguards and nuclear cooperation objectives of the International Atomic Energy Agency with admirable skill and professional dedication; and

Whereas Director General Blix has earned international acclaim for his contributions to world peace and security; Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress, on behalf of the people of the United States—

(1) commends Dr. Hans Blix for his untiring efforts on behalf of world peace and development as the Director General of the International Atomic Energy Agency; and

(2) wishes Dr. Blix a happy and fulfilling future.

EXPORT-IMPORT BANK REAUTHORIZATION ACT OF 1997

Mr. KEMPThorne. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 156, Senate bill 1026.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The bill clerk read as follows:

A bill (S. 1026) to reauthorize the Export-Import Bank of the United States.

The Senate proceeded to consider the bill (S. 1026) to reauthorize the Export-Import Bank of the United States, which had been reported from the Committee on Banking, Housing, and Urban Affairs, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Export-Import Bank Reauthorization Act of 1997.”

SECOND EXTENSION OF AUTHORITY.


TIED AID CREDIT FUND AUTHORITY.

(a) Section 10(c)(2) of the Export-Import Bank Act of 1945 (12 U.S.C. 635i–3(c)(2)) is amended by striking “through” and all that follows through “1997.”

(b) Section 10(e)(3) of such Act (12 U.S.C. 635i–3(3)) is amended by striking the first sentence and inserting the following: “There are authorized to be appropriated to the Fund such sums as may be necessary to carry out the purposes of this section.”

EXTENSION OF AUTHORITY TO PROVIDE FINANCING FOR THE EXPORT OF NONLITERAL DEFENSE ARTICLES OR SERVICES THE PRIMARY END USE OF WHICH WILL BE FOR CIVILIAN PURPOSES.

Section 1(c) of Public Law 103-428 (12 U.S.C. 635 note; 108 Stat. 4376) is amended by striking “1997” and inserting “2001.”

OUTREACH TO COMPANIES.

Section 2(b)(1) of the Export-Import Bank Act of 1945 (12 U.S.C. 635b(1)) is amended by adding at the end the following:

“(1) The Chairman of the Bank shall undertake to enhance the Bank’s capacity to provide information about the Bank’s programs to small and rural companies which have not previously participated in the Bank’s programs. Not later than 1 year after the date of the enactment of this subparagraph, the Chairman of the Bank shall submit to Congress a report on the activities undertaken pursuant to this subparagraph.”

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. KEMPThorne. I ask unanimous consent that the committee substitute be agreed to, the bill be considered read a third time, and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill appear at this point in the Record.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee substitute was agreed to.

The bill (S. 1026), as amended, was read the third time, and passed.

JOINT REFERRAL OF NOMINATION

Mr. KEMPThorne. Mr. President, as in executive session, I ask unanimous consent that the nomination of David L. Aaron, of New York, to be Undersecretary of Commerce for International Trade, received on September 12, 1997, be jointly referred to the Committee on Finance and the Committee on Banking, Housing, and Urban Affairs.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. KEMPThorne. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on the Executive Calendar: No. 136, No. 202, No. 224. I further ask unanimous consent that the nominations be confirmed, the motion to reconsider be laid upon the table, and any statements relating to the nominations appear at this point in the Record, the President be immediately notified of the Senate’s action, and the Senate then return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations, considered and agreed to en bloc, are as follows:

DEPARTMENT OF JUSTICE

John D. Trasvina, of California, to be Special Counsel for Immigration-Related Unfair Employment Practices for a term of four years.

FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES

Richard Thomas White, of Michigan, to be a Member of the Foreign Claims Settlement Commission of the United States for a term expiring September 30, 1999.

DEPARTMENT OF STATE

Stephen R. Sestanovich, of the District of Columbia, as Ambassador at Large and Special Adviser to the Secretary of State for the New Independent States.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

ORDERS FOR WEDNESDAY, SEPTEMBER 17, 1997

Mr. KEMPThorne. Mr. President, I ask unanimous consent that when the
Senate completes its business today it stand in adjournment until the hour of 9:45 a.m. on Wednesday, September 17. I further ask that on Wednesday, immediately following the prayer, the routine requests through the morning hour be granted and the Senate immediately resume consideration of H.R. 2107, the Interior appropriations bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

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PROGRAM

Mr. KEMPTHORNE. Mr. President, tomorrow the Senate will resume consideration of H.R. 2107, and at that point we hope Senator Enzi will be able to offer an amendment on Indian gaming. According to the previous order, at 10:45 a.m., the Senate will begin consideration of the MilCon appropriations conference report. Also, as under the order, a vote will occur at approximately 11 a.m., on the MilCon conference report. Following disposition of that report, the Senate will resume consideration of the Interior appropriations bill with the intention of concluding debate on Wednesday. Therefore, Senators should anticipate numerous votes on Wednesday. As always, Members will be contacted when these votes are ordered.

ADJOURNMENT UNTIL 9:45 A.M. TOMORROW

Mr. KEMPTHORNE. Mr. President, if there is no further business to come before the Senate, I now ask that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:14 p.m., adjourned until Wednesday, September 17, 1997, at 9:45 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate September 16, 1997:

DEPARTMENT OF STATE

STEPHEN R. SESTANOVICH, OF THE DISTRICT OF COLOMBIA, AS AMBASSADOR AT LARGE AND SPECIAL ADVISER TO THE SECRETARY OF STATE FOR THE NEW INDEPENDENT STATES.

The above nomination was approved subject to the nominee’s commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

DEPARTMENT OF JUSTICE

JOHN D. TRASVINA, OF CALIFORNIA, TO BE SPECIAL COUNSEL FOR IMMIGRATION-RELATED UNFAIR EMPLOYMENT PRACTICES FOR A TERM OF 4 YEARS.

FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES


DEPARTMENT OF DEFENSE

The following named officer for appointment as Chairman of the Joint Chiefs of Staff and Appointment to the grade indicated under provisions of Title 10, United States Code, Section 152:

To be general

GEN. HENRY H. SHELTON. 000.